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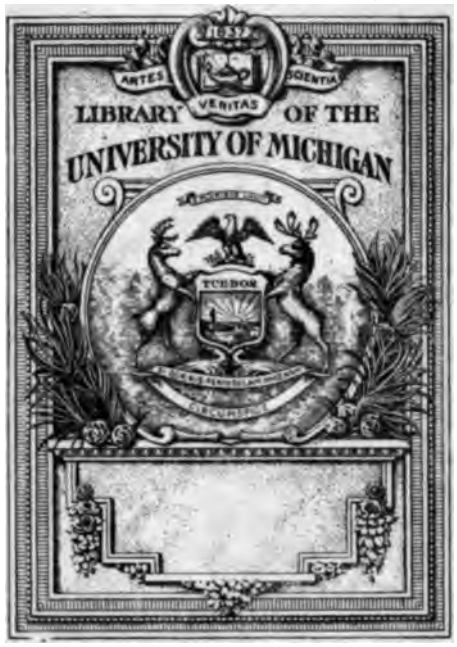

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The Commonwealth of Massachusetts

BULLETINS

FOR THE

CONSTITUTIONAL CONVENTION

1917–1918

VOLUME I

Bulletins 1 to 16

SUBMITTED TO THE CONSTITUTIONAL CONVENTION BY THE COMMISSION TO COMPILE INFORMATION AND DATA FOR THE USE OF THE CONSTITUTIONAL CONVENTION

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THE COMMONWEALTH OF MASSACHUSETTS

COMMISSION TO COMPILE INFORMATION AND DATA

FOR THE USE OF THE

CONSTITUTIONAL CONVENTION

ROOM 426, STATE HOUSE

BOSTON

THE COMMISSION

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BULLETIN No. 1

THE PROCEDURE OF CONSTITUTIONAL CONVENTIONS

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THE PROCEDURE OF CONSTITUTIONAL CONVENTIONS.

I. Organization of the Convention.

The act of April 3, 1916, under which the Convention is held, provides that the persons elected as delegates to the Convention shall assemble in the State House, Boston, on June 6, 1917. This act, like those of 1820 and 1852, is defective in that it does not designate the hour of meeting. The Convention of 1820 met at ten o'clock in the morning, while that of 1853 met at noon. In the absence of any express provision, the latter hour seems to be the appropriate time. The Convention shall be the judge of the returns and election of its members, and one hundred and sixty-one of the persons elected shall constitute a quorum for the transaction of business. The act further provides, "They shall be called to order by the Governor and shall proceed to organize themselves in Convention by choosing a president and such other officers and such committees as they may deem expedient, and by establishing rules of procedure."

From the foregoing recital it is apparent that when the Convention assembles on June 6, it will find itself provided with a temporary presiding officer in the person of His Excellency the Governor. Under his guidance it should proceed at once to form its permanent organization. The first step in this process is the ascertainment of the presence of a quorum, for without a quorum it can transact no business. As a means of ascertaining this fact it would be appropriate for the Secretary of the Commonwealth to be in attendance and to call the names of the delegates from a roll made up from the returns filed in his office. Upon reporting to the Governor the presence of a quorum, the delegates should qualify for their duties by taking an oath of office. There has been some question in the minds of many persons as to whether the delegates to a constitutional convention can with propriety take the usual oaths of office. It has

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been argued that the purpose of their assembling is to effect alterations in the Constitution of the Commonwealth and hence that an oath to support that instrument would be incongruous and inconsistent with this purpose. However that may be, it cannot be questioned that they are bound to support the Constitution of the United States, and there is nothing in their duties which is incompatible with the allegiance which they owe to the Federal Government. It seems clear also that they are equally bound to support and defend the Constitution of the Commonwealth. The Convention which will assemble on June 6 is not empowered to make any alteration in the Constitution on its own authority. It is only empowered to recommend changes to the people, and such changes become effective only when ratified by the people. It may be that none of its recommendations will be adopted, in which case the present Constitution remains the fundamental law of the Commonwealth. Or if the changes recommended are adopted, the present Constitution still remains the fundamental law until there has been an actual adoption of the changes proposed, and every citizen of the Commonwealth is legally bound to observe the law as it is until it has been lawfully altered. The whole matter is made clear if it be recognized that the assembling of the Convention not only does not dissolve the frame of government of the Commonwealth, but that it makes no change in it whatever. If the labors of the Convention shall ultimately produce alterations in the Constitution, that result will not occur until the people have acted by means of an election. Meanwhile the fundamental law of the State remains the fundamental law, which the members of the Convention should take an oath to defend and support.

Entirely apart from the reason of the thing, the Constitution of Massachusetts, in Article VI of the Amendments, contains the following mandatory provisions: —

ART. 6. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military under the government of this Commonwealth, before he shall enter on the duties of his office, to wit:

"I, A. B. do solemnly swear that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. SO HELP ME, GOD."

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Unless, therefore, it can be shown that the office of delegate to the Constitutional Convention is not an office "under the government of this Commonwealth," there is an express constitutional requirement that an oath of a prescribed form shall be taken.[1]

In the Convention of 1820 and in the Convention of 1853, the records do not show that the delegates took any oath of office or that any question concerning the propriety of their action was raised. In recent conventions in other States, such as Michigan, 1907, Ohio, 1912, and New York, 1915, the delegates took the usual oaths. The oath taken by the members of the Ohio Convention, which is substantially the same as that taken in Michigan and New York, was as follows: —

> I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Ohio, and that I will honestly and faithfully and to the best of my ability perform my duties as a member of the Convention to alter, revise or amend the Constitution of the State of Ohio. So help me, God.

It will probably happen that a few members cannot be present at the opening session of the Convention and take the oath of office at that time. Such members could qualify at a later date.

After the ascertainment of the presence of a quorum duly qualified by the usual oaths of fidelity to the Federal and the State Constitutions, the Convention should proceed to form its permanent organization by the election of a president and a secretary. In this connection it will be necessary for the Convention to determine how it will elect its officers, — whether by a secret ballot or by an open vote on a roll call. The first method was followed in the Massachusetts Convention of 1853 and is still employed by the Massachusetts Senate. The second method was used in the Michigan Convention of 1907, the Ohio Convention of 1912 and the New York Convention of 1915. It is also the mode of election used by the Federal House of Representatives in its choice of a Speaker.

In order to facilitate the work of the Convention, provision should at once be made for the selection of three commit-

[1] The Attorney-General ruled, "with some hesitation," that a delegate to the Convention is not an officer "under the government of this Commonwealth." See *House Document No. 1711 (1917)*. The Convention nevertheless voted that its members take an oath of office.

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tees. There should be a Committee on Permanent Organization, which should recommend to the Convention such an organization and list of officers as are needed for its work. This function is of a temporary nature, and when it has been performed the committee could be discharged. There should be a Committee on Credentials and Elections, which should be a standing committee. To it should be referred for verification the credentials of all persons claiming seats as delegates to the Convention, and it should also take jurisdiction over the subject of disputed elections. In many bodies these two subjects are assigned to different committees, but they are so closely allied that the work of the Convention would be expedited if they were placed under the jurisdiction of the same committee. The third committee, which should be selected at once in order that it may make an early report, is the Committee on Rules. Pending the adoption of a permanent set of rules, the Convention would perhaps find it advisable to adopt either the rules of the Convention of 1853, or the Rules of the present House of Representatives of Massachusetts so far as applicable.

II. The Nature of the Constitutional Convention as affecting its Procedure.

The superficial resemblances between a constitutional convention and a legislative body are so numerous that the features which distinguish the two are often overlooked. It is important, however, that their distinctive characteristics should be noted, for they have an important bearing on the nature of the rules to be adopted. A legislature is avowedly a partisan body. Much of its work has to do with the peculiar tenets of the party groups into which its members are divided. It is right that the party character of the legislature should be reflected in its rules, which are not merely parliamentary regulations for the government of a public meeting, but are the instrument by which the majority party is enabled to put through its program and fulfill, so far as it is disposed to do so, its pre-election pledges to the people. The rules are the means by which the majority party makes its responsibility effective. In a constitutional convention party lines are likely to be less sharply drawn. To be sure

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they are seldom entirely absent, and in some conventions, notably the New York Convention of 1915, they are as conspicuous as in any legislative body. But on the other hand, constitutional conventions are sometimes chosen without party designations, which tends to keep party affiliations in the background, and the very nature of the questions which constitutional conventions are called to consider makes party alignment a matter of subordinate importance. Such division as there is among the delegates is more likely to be between the advocates and the opponents of some proposed change in the Constitution, — and this not always the most important one that the Convention is to consider.

A constitutional convention differs also from a legislative body in the fact that even more than the latter it is a deliberative body. Both, to be sure, are deliberative bodies. Both seek to obtain the best results by discussion. But in the case of a constitutional convention full and free discussion is far more necessary than in a legislature. If there is any assembly in which there should be unlimited debate, it is a constitutional convention. It is dealing with the rules of law which are the canons regulating the action of all the branches of the State machinery. Many of these rules are attempts to formulate fundamental political principles. Furthermore, the results of the discussion of them are to be embodied in an instrument which is not easily changed. Hence the necessity of encouraging free discussion. But on the other hand, it is obvious that in a body of more than three hundred members there must be some restrictions. Even in a constitutional convention, discussion must ultimately give way to action. The rules adopted should, however, recognize the desirability of a freer and a more extended discussion than is reasonable in a legislature, and the conditions under which the previous question may be ordered should be carefully considered.

III. Subject-matter of the Rules.

The rules of order adopted by constitutional conventions may be arranged in three groups with reference to the purposes which they are designed to accomplish.

1. The rules generally set forth the names of the officers

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which are deemed necessary, fix the method of their appointment, and prescribe their duties. The Act under which the Massachusetts Convention of 1917 will assemble provides that the delegates shall choose "a President and such other officers and such committees as they may deem expedient." After the election of its President, therefore, the Convention has a free hand in the completion of its organization.

2. The rules generally prescribe what standing committees are to be established and how they are to be chosen. The Massachusetts Convention of 1853 followed a different procedure. On the opening day it ordered the appointment of a committee of one from each county "to consider and to report as to the best mode of proceeding to the revision of the Constitution of the Commonwealth." Two days later this committee reported a series of resolutions providing for the appointment of fifteen standing committees. The Committee on Rules did not make its report submitting a code of rules until the day after the establishment of the standing committees. In the Michigan Convention of 1907 the Committee on Permanent Organization and Order of Business recommended in its report a list of standing committees, and this list was adopted seven days before the rules were adopted. Whether the standing committees are provided for in the rules or by a separate vote is perhaps a matter of indifference; but since the rules always make provision for the President and other officers of the Convention, it would seem logical that they should also designate what standing committees shall be established and how they shall be appointed.

3. The rules should make such specific provision as to procedure as will best facilitate the work of the Convention. Here again it is necessary to note that a constitutional convention differs from a legislative body. The various measures which a legislature considers are almost entirely independent of each other. Any one of them may usually be considered and acted upon with little regard for any other measure which has been introduced. In a constitutional convention, however, all the proposals which are adopted must find a place as part of one instrument. Hence, when they are under consideration, their relation to each other and to existing provisions of the Constitution must be taken into account. This makes it necessary that all

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proposed amendments should be introduced as early in the session as possible, so that so far as may be the Convention may form some conception of the propositions as a whole. From the standpoint of the public also it is desirable that all proposals of amendment should be introduced as early as possible, in order that persons and organizations interested may have opportunity to inform themselves and to present their views to the Convention. It may be thought that members will need no spur to the early introduction of propositions, which would thus stand a better chance of full consideration. Nevertheless the Ohio Convention of 1912 made the introduction of measures after the first two weeks more difficult. In the New York Convention of 1915 it was found that at the end of the first month of the session there was little business pending before the committees, and a rule was then adopted that after June 11 (*i.e.*, about a month later) no proposals for amendment could be introduced by individual delegates, but only by committees. This action was taken with the avowed object of hastening the introduction of proposed amendments.

An interesting device was adopted by the Michigan Convention of 1907. Provision was made for stated weekly conferences of the chairmen of the standing committees presided over by the President of the Convention. In this way the various committees were kept informed of the progress of the work of each, and the business of the Convention was much facilitated. If a convention is not organized on party lines, this group of chairmen might well serve as the Committee on Rules. In a body organized on party lines that arrangement would be inequitable, for the minority would thus be deprived of all representation. Whether a Committee on Rules made up in this way would be feasible would depend also on the number of committees appointed. A committee made up of twenty committee chairmen might be unworkable because of its size. If it should be thought desirable that the Committee on Rules should be constituted in this way, the Committee on Permanent Organization should be asked to submit a list of standing committees as early as possible in order that their chairmen, if not their entire membership, might be appointed at once.

The rules should also provide a method whereby the Conven-

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tion can control its committees. There is perhaps not so much danger as there is in legislative bodies that measures will die in committee either through the inactivity or the hostility of the group to which they have been referred, but it is well for the Convention to guard against that contingency. The Ohio Convention of 1912 met the situation in this way:—

RULE 82. Any time after one week from the time when the Convention shall have committed any proposal to any committee, a report thereon in the meantime not having been made by said committee, the author of such proposal may, when no other business is pending and in any order of business, demand that such proposal be reported back to the Convention; and such demand when so made shall be deemed the action of the Convention, and the proposal is at once before the Convention subject to all rules of procedure as before; *provided, however*, that this shall not apply to a member whose proposal has passed its second reading and has been referred. The Convention by a majority vote may demand forthwith the report of any proposal that has been committed to any committee.

Not only should the Convention prevent its committees from stifling measures submitted to them, but it should see that the men who present measures for consideration have a fair opportunity to present the argument in their favor. This was the purpose of the following rule adopted by the Michigan Convention of 1907:—

RULE 51. All standing committees before reporting adversely on any proposal shall notify the member presenting such proposal when and where he may meet such committee to explain the same; such notice to be given by mail in the Convention post office twenty-four hours, or in person, at any time before so reporting.

It is important that the form of proposals of amendment should receive careful attention. In the Ohio Convention of 1912 the rules required that "all matters intended to become a part of the revised Constitution shall be presented by a member of the Convention in the form of a proposal, and shall be in writing and shall be printed by title, number and author's name in the Journal." It was also required that all proposals should be introduced in triplicate — one copy to be for the use of the press — and that they should be printed and distributed to members before reference to a committee. The New York Convention of 1915 provided in Rule 31 as follows: "The title of

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each proposition for constitutional amendment introduced shall state concisely its subject-matter. Matter which it is proposed to strike out shall be in brackets, and new matter shall be underscored and when printed shall be in italics." The Ohio Convention also forbade any amendment to a proposal of amendment which was not germane to the subject-matter of the proposal. An abuse common in legislative bodies was thus prevented.

IV. The Committees of the Convention.

1. *The Massachusetts Convention of 1853.*

The Convention of 1853 on its opening day ordered the appointment of the following committees: (1) a committee of five "to correct, examine and report upon the credentials of members;" (2) a committee of one from each county "to consider and report as to the best mode of proceeding to the revision of the Constitution of the Commonwealth;" (3) a committee of five "to report rules and orders for the regulation of the Convention;" (4) a committee of seven "to take into consideration and report what course should be adopted for reporting the proceedings of the Convention and also for the publication of the same;" (5) a committee of elections "consisting of seven members to consider and report upon the qualifications of members of the Convention."

The next day the Convention voted "that a committee of five be appointed to consider and report what measures it is desirable for the Convention to adopt to preserve and perpetuate its records." On the same day it was voted "that the Secretary of the Commonwealth be requested to send to the Convention the credentials of the members thereof, with a list of the members and that they be referred, when received, to the Committee on Elections." On the third day the committee appointed to consider and report upon the best mode of proceeding to the revision of the Constitution reported through its chairman, Henry Wilson, afterwards Vice-President of the United States, the following resolutions: —

1. *Resolved*, That so much of the Constitution as is contained in the Preamble and Declaration of Rights, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

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2. *Resolved*, That so much of the Constitution as relates to the Frame of Government and the General Court, in section 1 of chapter 1, and also so much as relates to Settling Elections by the Legislature, in article 7 of section 3, chapter 2, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

3. *Resolved*, That so much of the Constitution as relates to the Senate, be referred to a committee of twenty-one, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

4. *Resolved*, That so much of the Constitution as relates to the House of Representatives, be referred to a committee of twenty-one, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

5. *Resolved*, That so much of the Constitution as relates to the Governor, in section 1 of chapter 2, except so much as relates to the Militia, in section 10 of said chapter, and section 9 of said chapter, concerning appointments, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

6. *Resolved*, That so much of the Constitution as relates to the Militia, in section 1 of chapter 2, article 10, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

7. *Resolved*, That so much of the Constitution as relates to the Lieutenant-Governor, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

8. *Resolved*, That so much of the Constitution as relates to the Council, in sections 2, 3 and 4 of chapter 2, except article 7 of section 3, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

9. *Resolved*, That so much of the Constitution as relates to the Secretary and Treasurer, in section 4 of chapter 2, and the Attorney-General, Solicitor-General, Sheriffs, Coroners, Registers of Probate and Notaries Public, being article 9 of section 1, chapter 2, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

10. *Resolved*, That so much of the Constitution as relates to the Judiciary Power, chapter 3, and the two last clauses of article 13, section 1, chapter 2, relating to Salaries, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

11. *Resolved*, That so much of the Constitution as relates to the University of Cambridge, being chapter 5, section 2, be referred to a committee

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of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

12. *Resolved*, That so much of the Constitution as relates to the Encouragement of Literature, being chapter 5, section 2, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

13. *Resolved*, That so much of the Constitution as relates to Oaths and Subscriptions, Incompatibility of, and Exclusion from Office, Pecuniary Qualifications, Commissions, Writs, Confirmation of Laws, Habeas Corpus, and the Enacting Style, including the eight first articles in chapter 6, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

14. *Resolved*, That so much of the Constitution as relates to the Qualifications of Voters, being article 9 of chapter 6, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

15. *Resolved*, That so much of the Constitution as relates to Amendments of the Constitution and Enrolment, being articles 10 and 11 of chapter 6, be referred to a committee of thirteen, to take into consideration the expediency of making any, and if any, what alterations or amendments, and to report thereon.

On the fourth day the Committee on Rules and Orders reported a set of rules, which, after several minor amendments, were adopted. A copy of these rules is appended.

The list of committees as adopted by the Convention on the third day does not, however, comprise all the standing committees which the Convention authorized. From time to time as topics came before the Convention which did not seem to belong to any of the committees already authorized, new committees were ordered. Thus there was a special committee on Vacancies, another on the Adoption of the Principle of Plurality in Elections, another on the Loan of the Credit of the State, another on Banking Corporations, another on General Corporations and one on the Order of Business. Finally the authority of the fifteen committees originally authorized was extended to cover any proposition that they might deem compatible with the objects and purposes of their appointment.

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2. General Principles determining the Committees of a Constitutional Convention.

In determining how many and what committees should be appointed by the Convention, the following considerations are important.

First, the number of committees depends somewhat upon the size of the body which they serve. In general, it may be said that the larger the body is, the more dependent it is upon its committees and the more necessary it is to subdivide its work among these smaller groups. The Massachusetts Convention of 1917 is smaller by almost a hundred members than the Convention of 1853, but it still has 320 members; and when this number is compared with the Michigan Convention of 96 members, the Ohio Convention of 119 members, and the New York Convention of 168 members, it will be realized that it is one of the largest bodies of the kind ever assembled in this country. It is obvious, therefore, that general discussion and general deliberation will depend for their success upon the thorough digesting of the business of the Convention by preliminary consideration in committees.

In the second place it is desirable that every member of the Convention should be assigned to some committee. This is beneficial both to the individual member and to the Convention as a whole. In a body as large as the Massachusetts Convention this entails three results. First, the number of committees must be so large that some of them will have little or nothing to do. But the mere fact that a committee never makes a report to the Convention should not be held to indicate that it has been useless. Second, the committees for the most part must have at least fifteen members, which in the opinion of many experienced parliamentarians is an unwieldy number. Complaint was made in the Ohio Convention that its committees of seventeen members were so large that it was difficult to obtain the presence of a quorum. Third, the existence of a large number of committees creates the danger that subjects which ought to be considered as a unit by one committee will be unduly subdivided and distributed among several commit-

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tees. This objection has been raised to the system of committees adopted by the New York Convention of 1915.

Again the number of committees will depend somewhat upon the extent of the revision which the Convention undertakes. The Convention of 1853 evidently intended at the outset carefully to scrutinize all parts of the Constitution, and, as has already been indicated, they began their work by providing a series of fifteen committees, to one or the other of which every section of the Constitution was assigned for consideration. Even after having made this extensive provision, however, the Convention found it necessary to provide some special committees for particular subjects such as Corporations, the Loan of the Credit of the State, etc. The conventions recently held in New York, Ohio and Michigan have followed the principle of choosing committees to deal with particular subjects rather than the principle followed by the Massachusetts Convention of 1853 of assigning every part of the Constitution to some committee. For instance, in the Ohio Convention of 1912 are found committees on Agriculture, Banks and Banking, County and Township Organizations, Education, Equal Suffrage and Elective Franchise, Good Roads, Initiative and Referendum, Liquor Traffic, Short Ballot and Taxation. Similar committees appear in both the Michigan and New York Conventions. A list of the committees appointed in these three Conventions is appended hereto.

In the fourth place, there are some committees which are necessary to the smooth working of the machinery of any deliberative body. Among these may be mentioned such committees as the Committee on Credentials, on Elections, on Rules, on Contingent Expenses and on Printing.

Besides the two great groups of committees having to do respectively with the operation of the machinery of the Convention and with the merits of the proposals for amendment which are introduced into the Convention, there is another committee which stands in a class by itself and is of peculiar importance in a Constitutional Convention. This is the committee known in the Federal Convention of 1787 as the Committee on Style, and in some more recent State conventions as the Committee on Arrangement, or the Committee on Engrossment, or the Com-

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mittee on Arrangement and Phraseology. It is obvious that the phraseology of constitutional provisions is a matter of paramount importance. If a statute is awkwardly or carelessly phrased and is found in operation not to express the intent of its framers, it can easily be amended; but mistakes in the framing of constitutional provisions are difficult to rectify, and a convention cannot be too careful in the phrasing of the amendments which it submits to the people. The Michigan Constitution of 1908 has been very much praised because of its careful drafting, and this may be said to be entirely due to the work of its Committee on Arrangement and Phraseology. In the Michigan Convention of 1907–08 a proposal when introduced by a member was read and referred to its appropriate committee. On being reported to the Convention, it was discussed in Committee of the Whole and then referred to the Committee on Arrangement and Phraseology. When reported by that Committee it was put upon its second reading and was then voted upon. If it was adopted, it was again referred to the Committee on Arrangement and Phraseology. When all of the proposals adopted by the Convention had been thus acted upon, the Convention took a recess for twelve days, and in that interval the Committee on Arrangement and Phraseology arranged in systematic form the proposals which the Convention had adopted, and upon the reconvening of the Convention, the Committee laid before it a complete revision of the Constitution. This revision was then considered by sections in Committee of the Whole and finally reported to the Convention, where it was put upon its third reading and voted upon both by articles and as a whole. By this procedure there were four different opportunities for the discussion and amendment of every proposition, and before final adoption the Convention had an opportunity to consider a complete draft of the revised Constitution. This procedure seems cumbersome, but the phrasing of proposed amendments cannot be made the subject of too much care. Furthermore this full discussion does much to reconcile conflicting views. While there was much difference of opinion as to the several subjects discussed in the Michigan Convention, it is interesting to note that the final draft of the Constitution was adopted by a unanimous vote.

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3. Committee of the Whole.

A parliamentary device quite commonly employed both by legislatures and by constitutional conventions is the Committee of the Whole. The rules of the Massachusetts Convention of 1853, as well as the rules of recent conventions in other States, provide for it, and it is found in the rules of both houses of Congress, as well as in those of most of the State legislatures. For some cause for which no satisfactory explanation has been discovered, provision for a Committee of the Whole was dropped by the Massachusetts Legislature some years ago, although the rules still provide for it and some attempts to restore it have been made. It is a device which has several distinct advantages, which may be summarized as follows: —

1. It permits discussion by practically the whole body of which it is in name a committee without the formality and technical procedure which the rules impose upon the body as a whole. It is thought that much time is thus saved by obviating wrangling about the rules and points of order.

2. It enables a body to determine by a preliminary discussion of the broad outlines of a project whether it is sufficiently impressed in its favor to be willing to give it further consideration. The working of the Committee of the Whole in this respect was thus explained by the President of the New Hampshire Constitutional Convention of 1912: —

> In the Committee of the Whole there is no yea and nay vote, and the number of times that a man can speak upon a measure is not limited, and there is a chance for full and free debate. Then the Committee of the Whole, which is really the Convention sitting with a different presiding officer, — a man called Chairman of the Committee, instead of President of the Convention, — can decide whether the subject-matter which they have under consideration is something they want to support or oppose. If it is something that the full membership, having discussed it in the Committee of the Whole, decide that they do not want it to go any further, then the Committee of the Whole recommends back to the Convention the defeat of the measure. If it is something which they think should go forward, then it is referred back to the Convention, usually with the recommendation that it go to the proper standing committee, who will then reconsider it, in the light of the fact that the Convention has favored it in the Committee of the Whole, with the idea of putting it in the proper shape, so when it comes back from that committee it can come back in proper shape with the recommendation of both the Committee of the Whole and the Standing Committee.

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3. It permits the public discussion of amendments. In the history of legislative bodies it has been found that the most reprehensible legislation has often been adopted by means of amendments recommended by a small committee and adopted by the legislature without discussion and without a full understanding of their meaning and effect. This is rendered difficult if not impossible if measures are considered in a Committee of the Whole and there whipped into shape for final enactment. So great was the confidence of the New York Convention of 1915 in the efficacy of this method of procedure that the rules not only provided that there might be a Committee of the Whole, but that no amendment should be ordered to a third reading until it had been considered in Committee of the Whole. The extent to which this Committee has been made use of in other recent Conventions has greatly varied. The Ohio Convention of 1912 made slight use of it, but the Michigan Convention of 1907, in a session extending over 72 days, went into Committee of the Whole more than fifty times.

4. Hearings.

The rules of the Convention should make it clear that its committees are empowered to hold public hearings. In all the recent conventions in other States this has been a prominent feature. In New York, particularly, men were not only permitted to appear before committees, but men who were expert in their several subjects, either through official experience or long study, were invited to appear. Among those who gave the committees of the New York Convention the benefit of their knowledge and experience were Ex-President Taft, President Lowell, President Goodnow, and Representative Fitzgerald, chairman of the Committee on Appropriations of the Federal House of Representatives.

V. Petitions and Remonstrances.

A question which should receive consideration when the rules of the Convention are framed is the definition of the conditions under which petitions, remonstrances and similar communications will be received. In the Convention of 1853 petitions could be presented to the Convention only on introduction by a delegate. In the Michigan Convention of 1907, Rule 38, and

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in the Ohio Convention of 1912, Rule 83 required in identical words that "all matters intended to become a part of the revised constitution shall be presented by a member of the Convention in the form of a proposal," but apparently there was nothing in the rules to prevent the reception of a petition or remonstrance emanating from any source provided it did not contain matter intended to become a part of the revised constitution. In both Conventions the first item on the daily order of business was the presentation of petitions. The New York Convention of 1915 was more explicit in the provisions adopted concerning petitions. Rule 4 was as follows:—

RULE 4. Petitions, memorials, remonstrances and any other papers addressed to the Convention shall be presented by the President, or by any member in his place, read by their titles, unless otherwise ordered, and referred to the proper committee.

In Rule 3, setting forth the daily order of business, it was provided that the first business after the reading and correction of the Journal should be the "presentation of memorials. Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies."

Should the Convention deem it wise to require all petitions to be introduced on the responsibility of a delegate, it is not probable that any meritorious proposition would fail of consideration for lack of a sponsor. On the other hand it could be said that a body called to consider the revision of the fundamental law of the State and whose work is later to be submitted to a popular vote might with propriety be less rigorous in the formalities attending the introduction of petitions than is a legislative body.

VI. THE REGULATION OF THE LOBBY.

A subject which has been regulated by many legislative bodies and which has also been dealt with to some extent by recent constitutional conventions in other States is the lobby. The Ohio Convention of 1912 adopted the following rule bearing on the subject:—

RULE 105. Any person who desires to appear before any of the standing or select committees of this Convention for the purpose of presenting arguments for or against any proposition committed to the

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consideration of any committee of the Convention, or pending before the Convention itself, or who desires to present arguments to any member or group of members of this Convention at any time or place, shall first register his or her name and address with the secretary of this Convention, together with all information as to the capacity in which he or she so appears, amount of compensation, if any, received for such service, and by whom said compensation is to be paid. Citizens who desire to present arguments to members in their own counties, may register their names and other information by mail. All records of the secretary provided for under this rule shall be open to the public.

The New York Convention of 1915 also adopted a rule which touches upon the subject in a somewhat remote way. The New York Convention provided in Rule 54 for the admission of certain persons to the floor of the Convention and then added:—

No person shall be entitled to the privileges of the floor of the Convention as a legislative reporter of a newspaper who is interested in pending or contemplated constitutional revision, or who is employed by, or receives compensation from, any corporation, except a newspaper, news or press association.

Many legislative bodies have found it advisable to require the registration of legislative counsel and to make other regulations concerning the methods by which their individual members may be approached by persons who seek to influence their action. It would be pertinent for the Constitutional Convention to consider how far it is desirable for it to adopt similar regulations.

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APPENDIX.

1. RULES AND ORDERS OF THE MASSACHUSETTS CONSTITUTIONAL CONVENTION OF 1853.

OF THE PRESIDENT.

1. The President shall take the chair every day at the hour to which the Convention shall have adjourned; shall call the members to order; and on the appearance of a quorum, shall cause the Journal of the preceding day to be read, and proceed to business.

2. He shall preserve decorum and order; may speak to points of order in preference to other members; and shall decide all questions of order, subject to an appeal to the Convention on motion regularly seconded; and no other business shall be in order till the question on the appeal shall have been decided.

3. He shall declare all votes; but if any member doubts a vote, the President shall order a return of the number voting in the affirmative, and in the negative, without any further debate upon the question. When a vote is doubted, the members for or against the question, when called by the President, shall rise and stand uncovered till they are counted.

4. He shall rise to put a question, or to address the Convention, but may read sitting.

5. In all cases the President may vote.

6. When the Convention shall determine to go into Committee of the Whole, the President shall appoint the member who shall take the chair.

7. On all questions and motions whatsoever, the President shall take the sense of the Convention by yeas and nays, provided one-fifth of the members present shall so require. When the yeas and nays are taken, no members shall be allowed to vote, who shall have entered the Convention after the calling of the roll is finished. The names of members shall be called in alphabetical order.

8. He shall propound all questions, in the order in which they are moved, unless the subsequent motion be previous in its nature; except that, in naming sums and fixing times, the largest sum and the longest time shall be put first.

9. After a motion is stated or read by the President, it shall be deemed to be in possession of the Convention, and shall be disposed of by vote of the Convention; but the mover may withdraw it at any time before a decision or amendment, except a motion to reconsider, which shall not be

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withdrawn after the time has elapsed within which it could be originally made.

10. When a question is under debate the President shall receive no motion, but to adjourn, to lay on the table, for the previous question, to postpone to a day certain, to commit, to amend, or to postpone indefinitely; which several motions shall have precedence in the order in which they stand arranged.

11. He shall consider a motion to adjourn as always in order; and that motion, and the motions to lay on the table, to take up from the table, to suspend any rule, and for the yeas and nays, shall be decided without debate.

12. He shall put the previous question in the following form: "*Shall the main question be now put?*" — and all debate upon the main question shall be suspended until the previous question shall be decided. After the adoption of the previous question, the sense of the Convention shall forthwith be taken upon amendments reported by a committee, upon pending amendments, and then upon the main question.

13. On the previous question no member shall speak more than once without leave; and all incidental questions of order, arising after a motion is made for the previous question, shall be decided without debate, excepting on appeal, and on such appeal, no member shall be allowed to speak more than once without leave of the House.

14. When two or more members happen to rise at once, the President shall name the member who is first to speak.

15. All committees shall be appointed and announced by the President, unless otherwise specially directed by the Convention.

16. The President shall have the right to name any member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment.

17. The President shall have the general direction of the hall of the Convention, and of the galleries. No person excepting members, officers, and attendants of the Convention, and such persons as may be invited by the Convention, or by the President, shall be admitted within the bar of the Convention. The chairman of each Committee of the Whole, during the sitting of such committee, shall have the like power of preserving order in the hall and in the galleries.

Of Absence of President.

18. In case the President shall be absent at the hour to which the Convention was adjourned, the Secretary shall call the Convention to order, and shall preside until a President *pro tempore* shall be elected, which shall be the first business of the Convention.

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Of Members.

19. A seat shall be assigned to each member in such a manner as the Convention shall determine, which shall not be changed without leave of the President.

20. No member in debate shall mention a member then present by his name, but may describe him by the town he represents, the place he sits in, or such other designations as may be intelligible and respectful.

21. Every member when about to speak, shall rise and respectfully address the President, shall confine himself to the question under debate, and avoid personality, and shall sit down when he has finished. No member shall speak out of his place without leave of the President.

22. No member speaking shall be interrupted by another, but by rising up to call to order.

23. No member shall speak more than twice on one question, without first obtaining leave of the Convention; nor more than once, until other members, who have not spoken, shall speak, if they desire it.

Of Reconsideration.

24. When a vote has passed, it shall be in order for any member to move for a reconsideration thereof, on the same or the succeeding day, and such motion shall be placed first in the Orders of the Day for the day succeeding that on which the motion is made: a motion to reconsider being rejected shall not be renewed; nor shall any subject be a second time reconsidered: *provided, however*, that a motion to reconsider a vote, upon any collateral matter, shall not remove the main subject under consideration from before the Convention, but shall be considered at the time when it is made.

25. No member shall be obliged to be on more than two committees at the same time, nor chairman of more than one.

26. No member shall be permitted to stand up, to the interruption of another, while any member is speaking, or to pass unnecessarily between the President of the Convention and the person speaking; nor shall any member be permitted to stand in the alleys during the session of the Convention.

27. Every member shall keep an account of his own attendance and travel, and deliver the same to the committee appointed to make up the pay roll, and on his failure so to do, he shall be omitted from the roll; and no member shall receive pay for any weekday on which he has not actually attended, except in case of sickness.

28. Every member who shall neglect to give his attendance in the Convention for more than six days after the session commences, shall, on making his appearance therein, be held to render the reason of such neglect; and in case the reason assigned shall be deemed by the Convention sufficient, such member shall be entitled to receive pay for his travel, and

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not otherwise; and no member shall be absent more than two days, without leave of the Convention; and a vote of leave of absence shall be inoperative, unless the member obtaining it shall avail himself of it within five days.

29. When any member shall be guilty of a breach of either of the Rules and Orders of the Convention, he may be required by the Convention, on motion, to make satisfaction therefor, and shall not be allowed to vote, or speak, except by way of excuse, till he has done so.

30. Every member, who shall be in the Convention when a question is put, shall give his vote, unless the Convention, for special reasons, shall excuse him. Any member desiring to be so excused on any question, shall make application to that effect before a division, or before the calling of the yeas and nays; and such application shall be accompanied by a brief statement of reasons, and shall be decided without debate.

31. Every motion shall be reduced to writing, if the President shall so direct.

32. Any member may call for the division of a question when the sense will admit of it. A motion to strike out and insert shall be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment, nor a motion to strike out and insert.

33. Motions and reports may be committed, or recommitted, at the pleasure of the Convention.

34. No motion or proposition of a subject different from that under consideration, shall be admitted under color of amendment.

35. The unfinished business in which the Convention was engaged at the time of the last adjournment, shall have the preference in the Orders of the Day.

36. No rule or order of the Convention shall be dispensed with, altered, or repealed, unless two-thirds of the members present shall consent thereto.

37. All questions relating to the priority of business to be acted upon, shall be decided without debate.

38. Every question of order shall be noted by the Secretary, with the decision thereon, and inscribed at large on the Journal.

39. It shall be the duty of each member who moves that any committee be instructed to inquire into the expediency of amending the existing Constitution, to point out the amendment which he deems expedient, in writing, to accompany his motion, or to furnish a written statement thereof to such committee, if by them required.

Of Monitors.

40. Two Monitors shall be appointed for each division, whose duty it shall be to see the due observance of the Rules and Orders of the Convention, and on demand of the President, to return the number of votes and members in their respective divisions.

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41. If any member shall transgress any of the Rules or Orders of the Convention, and persist therein after being notified thereof by any Monitor, it shall be the duty of such Monitor to give information thereof to the Convention.

Of Petitions, Memorials, etc.

42. All papers addressed to the Convention, except petitions, memorials and remonstrances, shall be presented by the President, or by a member in his place, and shall be read by the President, Secretary, or such other person as the President may request, and shall be taken up in the order in which they were presented, unless where the Convention shall otherwise direct.

43. Every member, presenting to the Convention a petition, memorial, or remonstrance, shall endorse his name thereon, with a brief statement of the nature and object of the instrument, and the reading of the same from the chair shall in all instances be dispensed with, unless specially ordered by the Convention.

44. All reports, petitions, memorials, remonstrances, and papers of a like nature, shall be presented during the first hour of each session, and at no other time, except by special leave of the Convention.

45. If any member of the Convention shall so request, any order, which shall be proposed for adoption, shall be passed over for that day without question; and the same shall be considered and disposed of, on the succeeding day, in the same manner as it would have been on the day on which it was offered, if no objection had been made.

Of Quorum.

46. Not less than one hundred members shall constitute a quorum for the transaction of business.

Of Committees, Reports, and Resolutions.

47. No committee shall sit during the sessions of the Convention, without special leave.

48. In all elections, by ballot, of the Convention, a time shall be assigned for such election at least one day previous thereto.

49. In all elections of committees of the Convention, by ballot, the person having the highest number of votes shall act as chairman, and when the committee is nominated by the Chair, the member first named shall be chairman.

50. All papers, relative to any business before the Convention, shall be left with the Secretary, by any member, who may obtain leave of absence, and may have any such papers in his possession.

51. The rules of proceeding in the Convention shall be observed in a Committee of the Whole, so far as they may be applicable, except the rule limiting the times of speaking; but no member shall speak twice upon

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any question, until every member, who shall not have spoken, shall speak, if he desires it. A motion to rise, report progress, and ask leave to sit again, shall be always first in order, and shall be decided without debate.

52. Every order or resolution which proposes an alteration in the Constitution, and all reports of committees appointed to consider the propriety and expediency of making any alteration therein, shall be considered in Committee of the Whole before they are debated and finally acted upon in Convention.

53. Every resolution proposing any alteration in the Constitution, shall be read on two several days before it is finally acted upon and adopted by the Convention.

2. SELECTED PORTIONS OF THE RULES OF RECENT CONSTITUTIONAL CONVENTIONS.

COMPILED FROM THE RULES OF THE MICHIGAN CONVENTION OF 1907, THE OHIO CONVENTION OF 1912 AND THE NEW YORK CONVENTION OF 1915.

ORDER OF BUSINESS.

Michigan.

RULE 10. On the meeting of the Convention, the order of business shall be as follows:

1. Presentation of petitions.
2. Reports of standing committees.
3. Reports of select committees.
4. Communications from State officers.
5. Introduction and first reading of proposals.
6. Second reading of proposals.
7. Motions and resolutions.
8. Unfinished business..
9. Special orders of the day.
10. General orders of the day.

Ohio.

RULE 33. Until January 21, 1912, and on Mondays thereafter, the order of business shall be as follows:

1. Presentation of petitions and memorials.
2. Motions and introduction of resolutions.
3. Introduction of proposals — counties to be called in alphabetical order, said order to be reversed each alternate time.
4. Reference to committees of proposals introduced on the preceding days.
5. Reports of standing committees in their order.
6. Reports of select committees.
7. Resolutions laid over.
8. Proposals for their second reading and consideration as to substance by the Convention.

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9. Report of standing Committee on Arrangement and Phraseology.

10. Proposals for their third reading.

After January 21, 1912, except on Mondays, the order of business shall be as follows:

1. Proposals for their third reading.

2. Report of standing Committee on Arrangement and Phraseology.

3. Proposals for their second reading and consideration by the Convention.

4. Resolutions laid over.

5. Reports of standing committees, in their order.

6. Reports of select committees.

7. Reference to committees of proposals introduced on the preceding day.

8. Introduction of proposals — counties to be called in alphabetical order, said order to be reversed each alternate day.

9. Motions and introduction of resolutions.

10. Presentation of petitions and memorials.

RULE 34. The order of business shall not be changed, unless by unanimous consent or a suspension of Rule 33.

RULE 35. Any matter may be made a special order for a particular hour of the day, by a majority of the members present.

RULE 36. Not earlier than one day after introduction all proposals may be committed to a standing committee or to a select committee appointed for that purpose.

RULE 37. All proposals shall be introduced in triplicate, one copy of which shall be for the use of the newspaper reporters of the Convention. Immediately after introduction the secretary shall cause said proposals to be printed.

RULE 38. After the report of any committee upon a proposal, said proposal shall be read a second time and considered by the Convention. This consideration shall be final as to substance but not necessarily as to arrangement or phraseology. After favorable action by the Convention, said proposal shall be referred to the standing Committee on Arrangement and Phraseology, and shall thereafter be read a third time in full, for final action of the Convention as to form only.

RULE 39. The interim between any two sessions of the Convention, on the same day, or between two or more calendar days, when the Convention shall so order, shall be termed a recess; and, upon re-assembling at the appointed hour, any question pending at the time of taking a recess, shall be resumed without any motion to that effect.

RULE 40. The hour to which the Convention shall stand adjourned from day to day, shall be 5 o'clock P. M. on Mondays, 1.30 P. M. on Tuesdays, Wednesdays, Thursdays and Fridays. Unless otherwise ordered no session shall be held on Saturdays.

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New York.

RULE 3. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business shall be as follows:

1. *Presentation of Memorials.* — Under which head shall be included petitions, remonstrances and communications from individuals, and from public bodies.

2. *Communications from the Governor and Other State Officers.* — Under this head shall be embraced also communications from public officers and from corporations in response to calls for information.

3. Notices, motions and resolutions, to be called for by districts, numerically.

4. Propositions for constitutional amendment, by districts, in numerical order.

5. Reports of standing committees in the order stated in Rule 15.

6. Reports of select committees.

7. Third reading of proposed constitutional amendments.

8. Unfinished business of general orders.

9. Special orders.

10. General orders.

Reports from the Committee on Revision and Engrossment may be received under any order of business.

MOTIONS AND THEIR PRECEDENCE.

Michigan.

RULE 22. When a question is under debate, no motion shall be received but —

1. To adjourn.
2. To take a recess.
3. To lay on the table.
4. For the previous question.
5. To postpone to a day certain.
6. To commit.
7. To amend.
8. To postpone indefinitely.

Which several motions shall take precedence in the order in which they stand arranged. When a recess is taken during the pendency of any question, the consideration of such question shall be resumed upon reassembling, unless otherwise determined. No motion to postpone to a day certain, to commit or to postpone indefinitely, being decided, shall be again allowed on the same day and at the same stage on the question.

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RULE 23. A motion to adjourn shall always be in order; that and the motion to lay on the table, and all matters relating to questions of order, shall be decided without debate. A motion for a recess, pending the consideration of other business, shall not be debatable.

Ohio.

RULE 46. When a question is under consideration, no motion shall be in order except the following, which motions shall have precedence in the order named:

1. To adjourn.
2. To take a recess.
3. To proceed to the orders of the day.
4. To lie on the table.
5. For the previous question.
6. To postpone to a day certain.
7. To commit.
8. To amend.
9. To postpone indefinitely.

RULE 47. After the secretary has commenced to call the yeas and nays on any question, no motion or debate shall be in order until a decision has been announced by the chair.

RULE 48. When a motion is made to commit, if more than one committee is suggested, the motion shall be put upon the committees suggested, in the order in which they are named; but a motion to refer to the Committee of the Whole, to a standing committee, or to a select committee, shall have precedence in the order here named. A motion to commit may not be reconsidered.

RULE 49. A motion to postpone to a day certain, or indefinitely, being decided in the negative, shall not be again allowed at the same stage of the proposition.

RULE 50. A motion to adjourn being decided in the negative, shall not be again entertained until some motion, call, order, or debate shall have taken place.

RULE 51. The following questions shall be decided without debate:

1. To adjourn.
2. To take a recess.
3. To lie on the table.
4. The previous question.
5. To take from the table.
6. To go into the Committee of the Whole.
7. All questions relating to the priority of business.

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New York.

RULE 44. When a question is under consideration, the following motions only shall be received; which motions shall have precedence in the order stated, viz.:

Motions to or for:

1. Adjourn for the day.
2. Recess.
3. Call of the Convention.
4. Previous question.
5. Lay on the table.

} Not amendable or debatable.

6. Postpone indefinitely, not amendable, but debatable.

7. Postpone to a certain day.
8. Go into Committee of the Whole.
9. Commit to Committee of the Whole.
10. Commit to a standing committee.
11. Commit to a select committee.
12. Amend.

} Preclude debates on main question.

RULE 45. Every motion or resolution shall be stated by the President or read by the Secretary before debate, and again, if requested by any member, immediately before putting the question; and every motion, except those specified in subdivisions 1 to 11, inclusive, of rule 44, shall be reduced to writing if the President or any member request it.

RULE 46. After a motion shall be stated by the President, it shall be deemed in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

RULE 47. The motion to adjourn, to take a recess, and to adjourn for a longer period than one day, shall always be in order; but the latter motion shall not preclude debate.

RULE 49. No amendment to a motion shall be received while another is pending, unless it be an amendment to the amendment and germane to the subject.

COMMITTEE OF THE WHOLE.

Michigan.

RULE 30. When the Convention shall have arrived at the "General Orders of the Day," it shall go into committee of the whole upon such orders, or a particular order designated by a vote of the Convention, and no business shall be in order until the whole are considered or passed, or the committee arise: and unless a particular subject is ordered up, the committee of the whole shall consider, act upon or pass the general orders, according to the order of their reference.

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RULE 31. Proposals to the committee of the whole shall first be read through by the Secretary, and then read and adopted by clauses. All amendments shall be entered on separate paper and so reported to the Convention by the chairman.

RULE 32. A motion that the committee arise shall always be in order and shall be decided without debate.

RULE 33. A motion to reconsider shall be in order in committee of the whole.

RULE 34. The rules of the Convention shall be observed in committee of the whole, so far as they may be applicable, except that the vote of a majority of said committee shall govern its action; it cannot refer matter to any other committee; it cannot adjourn; the previous question shall not be enforced; the yeas and nays shall not be called; a motion to indefinitely postpone shall not be in order; a member may speak more than once. A journal of the proceedings in committee of the whole shall be kept as in convention.

Ohio.

RULE 70. When the Convention shall be ready to proceed to any order of the day, a motion to go into Committee of the Whole on the orders of the day shall have precedence of all other motions, except to adjourn, to take a recess, and for the previous question.

RULE 71. In forming the Committee of the Whole, the president shall leave the chair, and appoint a chairman, who shall preside and vote as other members.

RULE 72. In the Committee of the Whole, proposals shall be read by the chairman, or secretary, and be considered by sections, unless it shall be otherwise directed by the committee, leaving the preamble to be last considered.

RULE 73. The body of the proposal shall not be defaced or interlined, but amendments shall be noted by the chairman, or secretary, on a separate piece of paper as the same shall be agreed to by the committee, and so reported to the Convention.

RULE 74. After being reported, the proposal and amendments of the committee shall be immediately taken up for consideration unless it shall be otherwise ordered by the Convention, and again be subject to discussion or amendment.

RULE 75. The rules of the Convention shall be observed in Committee of the Whole, so far as the same may be applicable, except that it may not refer matter to any other committee; it may not adjourn; the previous question may not be enforced; the yeas and nays may not be called; a motion to postpone indefinitely may not be in order; a member may speak more than once. A journal of the proceedings in Committee of the Whole shall be kept as in Convention, and all debates shall be reported in the same manner. Such journal shall be printed in the Convention journal, with proper designation.

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New York.

RULE 25. Any matter may be committed to the Committee of the Whole upon the report of a standing or select committee, or by unanimous consent at any time. Any committee may be discharged from the further consideration of any matter referred to it, and such matter may then be referred to the Committee of the Whole, by a vote of the Convention. The same rules shall be observed in the Committee of the Whole as in the Convention, so far as the same are applicable, except that the previous question shall not apply, nor the yeas and nays be taken, nor a limit be made as to the number of times of speaking.

RULE 26. A motion to "rise and report progress" shall be in order at any stage, and shall be decided without debate. A motion to rise and report is not in order until each section and the title have been considered, unless the limit of time has expired.

RULE 27. Proposed constitutional amendments and other matters shall be considered in Committee of the Whole in the following manner, viz.: They shall be first read through, if the committee so direct; otherwise they shall be read and considered by sections. When the limit of time has expired, the amendments which have been proposed and not previously acted upon shall be voted upon in their order without further debate. The proposed constitutional amendment as amended shall then be voted upon without debate, and the committee shall then rise and report in accordance with the action which it has taken.

If the committee shall have adopted any proposed constitutional amendment, the same shall be reported complete with any amendments made in the committee incorporated in their proper places.

RULE 28. If at any time, when in Committee of the Whole, it be ascertained that there is no quorum, the chairman shall immediately report the fact to the President, who then takes the chair for the purpose of securing a quorum, and when that is obtained the chairman resumes his duties.

RULE 29. Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again.

THE INTRODUCTION OF AMENDMENTS.

Michigan.

RULE 38. All matters intended to become a part of the revised constitution shall be presented by a member of the Convention in the form of a proposal, and shall be in writing and shall be printed at length in the journal.

RULE 39. The regular order to be taken by proposals introduced in the Convention shall be as follows:

1. Introduction, first reading and reference to a committee by the President, unless otherwise ordered by a majority of the members present.
2. Report of committee and placing on the general order.

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3. Consideration in committee of the whole in order of reference.

4. Report by the committee of the whole and reference to the Committee on Arrangement and Phraseology.

5. Report of Committee on Arrangement and Phraseology.

6. Second reading, vote on passage.

7. Re-reference to Committee on Arrangement and Phraseology.

8. Report by Committee on Arrangement and Phraseology of the complete revision.

9. Reference to Committee of the Whole, which shall pass it by sections.

10. Report of Committee of the Whole and placing on the order of third reading.

11. Third reading and passage by articles and as a whole.

RULE 40. On the passage of every proposal, section, article and the complete revision, the vote shall be taken by yeas and nays, and entered on the journal, and no proposal, section, article or the complete revision shall be declared passed unless a majority of all the members elected to the Convention shall have voted in favor of the passage of the same.

Ohio.

RULE 83. All matters intended to become a part of the revised constitution shall be presented by a member of the Convention in the form of a proposal, and shall be in writing and shall be printed by title, number and author's name in the journal. Any proposal passed upon as to substance after its second reading shall be printed at length in the journal for that day; and any proposal that shall be passed upon as to form after third reading shall be printed at length in the journal for that day.

RULE 84. The regular order for proposals introduced in the Convention shall be as follows:

1. Introduction and first reading by title.
2. Printed by the secretary in bill form.
3. Reference to committee.
4. Report by committee.
5. Engrossment.
6. Second reading and consideration as to substance by the Convention.
7. Reference to standing Committee on Arrangement and Phraseology.
8. Report of standing Committee on Arrangement and Phraseology.
9. Third reading and consideration as to form by Convention.

RULE 85. Proposals shall be introduced in triplicate and shall be placed on the calendar and considered in the order in which they were introduced, unless otherwise provided.

RULE 86. All proposals shall be printed and distributed for the use of the members before the reference thereof, in the order in which they were introduced.

RULE 87. Before proposals are read the second time, they shall be ordered engrossed. The secretary shall engross all proposals so that the line numbers shall correspond with the line numbers in the printed proposals upon the members' bill books, as nearly as possible.

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RULE 88. If, after any proposal has been read the first time, no motion or order for its commitment shall be made, it shall be committed to the Committee of the Whole to be considered in its order, and the Convention shall decide when it shall be considered by the committee.

RULE 89. When a proposal is ordered to be engrossed, it shall be placed upon the calendar for its second reading for the second day following, unless the Convention by a majority vote otherwise orders, and the calendar for each day shall contain a list of all proposals for third reading on the succeeding day.

RULE 90. If a proposal has been amended prior to its second reading, the date and page of the Convention journal containing said amendments shall be noted on the calendar immediately below the title of the proposal.

RULE 91. When a question is lost on engrossing a proposal for second reading on a particular day, it shall not preclude a question to engross it for second reading on a different day. If on a division, the question of engrossing a proposal without including the time for its second reading, shall fail, the proposal shall be lost.

RULE 92. Unless otherwise ordered by a two-thirds vote of the Convention, proposals on the calendar for second or third reading shall be taken up and read in their order without a motion to that effect, and the question shall be "Shall the proposal pass?"

RULE 93. After the commitment and report thereon to the Convention, or at any time before its passage, a proposal may be recommitted.

RULE 94. Any proposal may be amended until the final vote is taken after third reading thereof. When a proposal is on its second or third reading any number of amendments may be made; but pending a motion to amend one part of the proposal, it shall not be in order to amend any other part of the proposal, unless the second amendment is necessary to a proper construction of the first. One amendment shall not prevent another in any other part of the proposal.

RULE 95. On the passage of every proposal at its second and third readings, and upon the final passage of every proposal, section, article, and complete revision, the vote shall be taken by yeas and nays, and entered upon the Journal, and shall be passed only on a majority vote of all members elected to the Convention.

New York.

RULE 30. No proposition for constitutional amendment shall be introduced in the Convention except in one of the following modes, viz.:

1. Under the order of introduction of propositions for constitutional amendment by districts, in numerical order.

2. By report of a committee.

RULE 31. The title of each proposition for constitutional amendment introduced shall state concisely its subject-matter. Matter which it is proposed to strike out shall be in brackets, and new matter shall be underscored and when printed shall be in italics. All proposed amendments shall be presented in duplicate.

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RULE 32. All propositions for constitutional amendment, after their second reading, which shall be by title, shall be referred to a standing or select committee, to consider and report thereon, and shall be immediately printed and placed on the files of each member. All proposed constitutional amendments reported shall, if the report be agreed to, be committed to the Committee of the Whole and immediately printed. When a committee has reported that no amendment should be made to the provisions of the existing Constitution relating to any specified subject, and such report is agreed to, all propositions for constitutional amendment relating to that subject which have been referred to that committee shall be considered as rejected. All constitutional amendments proposed by a minority report from any committee shall be printed and placed on the files of the members of the Convention.

RULE 33. Proposed constitutional amendments reported by the Committee of the Whole shall be subject to debate before the question to agree with the committee on their report is put.

RULE 34. No proposed constitutional amendment shall be ordered to a third reading until it shall have been considered in Committee of the Whole.

RULE 35. No proposed constitutional amendment shall be put upon third reading until it shall have been reported by the Committee on Revision and Engrossment as correctly revised and engrossed, unless by unanimous consent. Nor shall any proposed constitutional amendment be read the third time, unless it shall have been once printed.

RULE 36. Every proposed constitutional amendment shall receive three separate readings, previous to its final passage, and the third reading shall be on a day subsequent to that on which the proposed constitutional amendment passed in Committee of the Whole.

RULE 37. The third reading of proposed constitutional amendments shall take place in the order in which they have been ordered to a third reading, unless the Convention, by a vote of two-thirds of the members present, direct otherwise, or the proposed constitutional amendment to be read is laid on the table. And the question on the final passage of every proposed constitutional amendment shall be taken immediately after such third reading, and without debate, but the vote on the final passage of every proposed amendment, revision or addition to the Constitution shall be taken by ayes and nays, which shall be entered on the journal.

RULE 38. In all cases where unanimous consent is asked for advancing a proposed constitutional amendment out of its order, it shall be the duty of the President to plainly announce such request in full twice.

RULE 39. On the third reading of a proposed constitutional amendment, after the reading of the title, and before the reading of the text, the proposed constitutional amendment shall be open one hour, if required, for debate on its merits, before the previous question shall be ordered; but no member shall speak more than five minutes or more than once; the vote, however, may be taken at any time when the debate is closed.

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RULE 40. On the third reading of the proposed constitutional amendment, no amendment thereto shall be in order, except to fill blanks, without unanimous consent.

RULE 41. A motion may be made during the third reading of any proposed constitutional amendment to recommit it, and such motion shall not be debatable.

RULE 42. A register shall be kept by the Secretary of all proposed constitutional amendments introduced in the Convention, in which shall be recorded, under appropriate heads, the progress of such proposed constitutional amendments from the date of their introduction to the time of their final disposition.

RULE 43. In all cases where a proposed constitutional amendment, order, motion or resolution shall be entered on the journal, the name of the member introducing or moving the same shall also be entered on the journal.

THE PREVIOUS QUESTION.

Michigan.

RULE 24. The method of ordering the previous question shall be as follows: Any member may move the previous question. This being seconded by at least ten members, the chair shall put the question, "Shall the main question now be put?" This shall be ordered only by a majority of the members present and voting. After the seconding of the previous question and prior to order the same, a call of the Convention may be moved and ordered or a demand for the yeas and nays may be made, but after ordering the previous question no call or motion shall be in order prior to the decision of the chair, which shall be decided without debate. The effect of the previous question shall be to put an end to all debate and bring the Convention to a direct vote upon a motion to commit, if such a motion shall have been made, and if this motion does not prevail, then upon amendments reported by a committee, if any; then upon pending amendments, and then upon the main question. When a motion to reconsider is taken under the previous question and is decided in the affirmative, the previous question shall have no operation upon the question to be reconsidered. If the Convention shall refuse to order the main question, the consideration of the subject shall be resumed as though no motion for the previous question had been made.

RULE 25. All incidental questions of order arising after a motion is made for the previous question, and pending such motion, shall be decided whether on appeal or otherwise without debate.

Ohio.

RULE 62. The previous question shall be in this form: "Shall the debate now close?" It shall be permitted when demanded by five or more members, and must be sustained by a majority vote, and, until

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decided, shall preclude further debate and all amendments and motions, except one motion to adjourn and one motion to lie on the table.

RULE 63. All incidental questions, or questions of order, arising after a motion is made for the previous question, and pending such motion, shall be decided without debate, and shall not be subject to appeal.

RULE 64. On a motion for the previous question, and prior to voting on the same, a call of the Convention shall be in order; but after the demand for the previous question shall have been sustained, no call shall be in order; and the Convention shall be brought to an immediate vote — first upon the pending amendments in the inverse order of their age, and then upon the main question.

RULE 65. If a motion for the previous question be not sustained, the subject under consideration shall be proceeded with the same as if the motion had not been made.

New York.

RULE 53. The "previous question" shall be put as follows: "Shall the main question now be put?" and until it is decided, shall preclude all amendments or debate. When, on taking the previous question, the Convention shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be on the passage of the proposed amendment to the Constitution, resolution or other matter under consideration, but when amendments thereto are pending, the question shall first be taken upon such amendments in their order, and when adopted in Committee of the Whole, and not acted on in the Convention, the question shall be taken upon such amendments in like order.

RECONSIDERATION.

Michigan.

RULE 28. Any member who voted on the prevailing side of any question may move for a reconsideration thereof on the same or next succeeding day or upon any subsequent day, after giving three days' notice of his intention to do so, and such motion shall take precedence of all other questions, except a motion to adjourn; but shall not be renewed on the same day.

Ohio.

RULE 57. A motion to reconsider a vote must be made by a member voting with the prevailing side, and such motion, to be in order, must be made within the next two calendar days of actual session of the Convention, after such vote was taken, and the same shall take precedence of all other questions, except a motion to adjourn.

RULE 58. The vote on any question may be reconsidered by a majority of the members present.

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RULE 59. When a proposal is lost, and the vote is reconsidered, it shall not thereafter be committed to any other than a standing committee.

RULE 60. A motion to reconsider may not be reconsidered.

RULE 61. If a motion to reconsider be laid on the table it does not carry to the table the proposal.

New York.

RULE 48. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and by a member who voted in the majority, except to reconsider a vote on the final passage of a proposed constitutional amendment, which shall be privileged to any member. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

To take from the table; or

For the previous question.

3. STANDING COMMITTEES OF THE MICHIGAN CONVENTION OF 1907, THE OHIO CONVENTION OF 1912 AND THE NEW YORK CONVENTION OF 1915.

COMMITTEES OF THE MICHIGAN CONVENTION OF 1907.

		Number of Members.
I.	Boundaries, Seat of Government, and the Division of the Powers of Government,	5
II.	Legislative Department,	15
III.	Executive Department,	11
IV.	The Judiciary,	15
V.	Elections and Elective Franchise,	9
VI.	State Officers and Salaries,	5
VII.	Counties,	9
VIII.	Townships,	9
IX.	Cities and Villages,	15
X.	Public Service Corporations,	15
XI.	Banks and Banking,	9
XII.	Private Corporations,	11
XIII.	Education,	11
XIV.	Finance and Taxation,	15
XV.	Impeachment and Removals from Office,	7
XVI.	Exemptions,	7

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		Number of Members.
XVII.	Militia,	5
XVIII.	Miscellaneous Provisions,	13
XIX.	Amendments and Revision,	9
XX.	Schedules,	5
XXI.	Arrangement and Phraseology,	5
XXII.	Submission and Address to the People,	15
XXIII.	Bill of Rights,	5
XXIV.	Public Lands and Reforestation,	5
XXV.	Liquor Traffic,	11
XXVI.	Eminent Domain,	5
XXVII.	Supplies and Expenditures,	5
XXVIII.	Printing and Publication,	5

COMMITTEES OF THE OHIO CONVENTION OF 1912.

I.	Agriculture,	17
II.	Arrangement and Phraseology,	9
III.	Banks and Banking,	17
IV.	Claims against the Convention,	17
V.	Corporations other than Municipal,	17
VI.	County and Township Organization,	17
VII.	Education,	17
VIII.	Employees,	5
IX.	Equal Suffrage and Elective Franchise,	21
X.	Good Roads,	21
XI.	Initiative and Referendum,	21
XII.	Judiciary and Bill of Rights,	21
XIII.	Labor,	17
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		Number of Members.
III.	The Powers, Limitations and Duties of the Legislature, except as to Matters otherwise referred, . . .	17
IV.	The Right of Suffrage and the Qualifications to hold Office, ...	17
V.	The Governor and Other State Officers, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties, except as otherwise referred, . . .	17
VI.	The Judiciary, ...	17
VII.	The State Finances, Revenues, Expenditures, and Restrictions on the Powers of the Legislature in respect thereto, and to Public Indebtedness, ...	17
VIII.	Cities, their Organization, Government and Powers, .	17
IX.	Canals, ...	11
X.	Public Utilities, ...	17
XI.	Counties, Towns and Villages, their Organization, Government and Powers, ...	17
XII.	County, Town and Village Officers, other than judicial, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties, ...	17
XIII.	State Prisons and Penitentiaries, and the Prevention and Punishment of Crime, ...	11
XIV.	Corporations and Institutions, not Otherwise herein specified, ...	17
XV.	Currency, Banking and Insurance, ...	11
XVI.	The Militia and Military Affairs, ...	7
XVII.	Education and the Funds relating thereto, . . .	17
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BULLETIN No. 2

STATE BUDGET SYSTEMS IN THE UNITED STATES

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STATE BUDGET SYSTEMS IN THE UNITED STATES.

I. Introduction.

Definition of a Budget.

A budget may be defined as a plan for financing the government during a definite period which is prepared and submitted by a responsible executive to a representative body whose approval and authorization are necessary before the plan may be executed.[1] A budget is essential if there is to be a proper balance between revenue and expenditures and in order to give the representatives of the people adequate control over expenditures.

The Budget in European Countries.

In practically all European countries the preparation of a budget has long been regarded as absolutely necessary to secure economy and efficiency in the administration of public finances. In those countries a responsible minister makes up the budget and it is his duty to co-ordinate estimates of receipts and expenditures into a definite plan. Such estimates are not merely conjectural or founded on the opinion of the moment, but are based on careful estimates which have been submitted by the various departments, commissions, boards, institutions and members of the legislative body. The budget submitted for enactment into law gives a complete statement of estimated expenditures scientifically classified, together with a statement of the sources and amount of income. In the national government of the United States and in most of the States, however, the function of making up the budget has been assumed by appropriation committees with the result that our governments have on the whole been run without careful financial planning. The adoption of a budget system would greatly improve conditions in this country

[1] Frederick A. Cleveland, "Budget Idea in the United States," in *The Annals of the American Academy of Political and Social Science*, Vol. 62, November, 1915, p. 15.

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by substituting businesslike financial methods for the present unscientific, haphazard practices which are followed by most legislatures and appropriation committees.

Budget Systems in American States.

Although the national government and most of the States have been backward in the matter of improving their financial procedure, there has been a movement among several States in the last few years which has resulted in the adoption of budget systems. Beginning with Wisconsin in 1911, this movement has progressed until at the present time there are twenty-three States which have provided for permanent budget systems of one type or another, or which have made provision for the preparation of estimates of revenue and expenditure. These States are Connecticut (1915), Illinois (1913), Iowa (1915), Kansas (1917), Louisiana (1916), Maine (1915), Maryland (1916), Massachusetts (1918), Minnesota (1915), Nebraska (1915), New Jersey (1916), New Mexico (1917), New York (1916), North Carolina (1917), North Dakota (1915), Ohio (1913), Oregon (1913), South Dakota (1917), Tennessee (1917), Utah (1917), Vermont (1915), Washington (1915), and Wisconsin (1911).[1] The State of Delaware decided to experiment with the budget plan, and enacted a law in 1917 providing for a budget for a single session.[2] Mississippi took similar action in the same year.[3] Of the States just enumerated Maryland is the only one which has provided for a budget system in its Constitution.[4] It will be noted that all of the above-mentioned budget laws have been enacted within the last seven years and that most of them have been enacted within the last two years.

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[1] A table with exact references to the several statutes on the budget may be found in Appendix A.

[2] *Laws of Delaware, 1917*, chapter 278. The resolve opens with the following frank confession:

"*Whereas* it has been the custom in this State for each General Assembly to appropriate large sums of money without regard to the condition of the State Treasury; and

"*Whereas* this system has resulted in much confusion and embarrassment to the different departments of the State Government; and

"*Whereas* it is the universal desire that the General Assembly shall first provide for the necessary expenses of the State Government for the two ensuing fiscal years;

"*Therefore be it resolved*," etc.

[3] *Laws of Mississippi, Extraordinary Session, 1917*, chapter 60.

[4] Since the above statement was prepared, Massachusetts and West Virginia have adopted amendments providing for budget systems. See Appendices F and H. An amendment submitted in California in November, 1918, was rejected.

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Different Types of Budget Systems.

In general there are two methods of constituting the central budget-making authority in the various States. In several of the commonwealths, including Connecticut, Louisiana, New York, North Dakota, South Dakota, Tennessee, Washington, Wisconsin and Vermont, a board or committee is responsible for the preparation of the budget and its submission to the Legislature. The States of Kansas, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, Ohio and Utah, on the other hand, have provided for an "executive budget," which places upon the Governor alone the duty of submitting the tentative budget of estimated appropriations and revenue. The early budget laws followed the former plan, but the recent tendency is toward the executive budget. In addition to these two general methods there is the Oregon plan, according to which the Secretary of State tabulates the estimates; while in North Carolina the Legislative Reference Librarian is required to collect estimates from the several departments and tabulate them for the use of the departments and of the Legislature.

After the tentative budget has been prepared either by the Governor or the budget board, it is submitted to the Legislature for consideration and action. In all of the States except Maryland and New Mexico the budget as presented by the central budget-making authority is merely advisory, and the recommendations which it contains may be rejected and its items increased, decreased or stricken out by the Legislature without restriction. In Maryland and New Mexico, however, the Legislature cannot increase the Governor's budget. It may only reduce or strike out items, and may enact supplementary measures for purposes not provided for in such budget only by following the special procedure indicated. The budget amendment submitted by the New York Constitutional Convention of 1915 contained a similar provision, as does also the constitutional amendment now pending in West Virginia.

The adoption of this limitation upon the power of the Legislature to make appropriations in excess of the sums recommended in the budget is a step of great importance. In Great Britain it has long been the rule that Parliament will make no appropriation which the ministry has not included in the budget. In the United States there is comparatively little connection between the estimates submitted

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by the Secretary of the Treasury and the appropriations made by Congress. It is common for that body not only to make appropriations which the executive has not recommended but also appropriations which he has strongly opposed. In the States budgetary legislation has thus far not gone much beyond the preparation by the executive of estimates of revenue and expenditure. Hence the acceptance in a few States of the sound budgetary principle that while the Legislature may reduce the amounts recommended by the executive it will never increase them marks a great advance.

II. Executive Budget Systems established by Constitution.

Maryland Budget Amendment.[1]

Maryland is not only the first of the States to adopt a constitutional provision for a budget system, but it has gone farther than any of the commonwealths in developing the idea of an executive budget. The recent amendment resulted from the efforts of Governor Harrington's Commission on Economy and Efficiency, and was adopted by the voters at the general election in November, 1916, by a vote of 77,478 to 37,100. In general, the amendment follows the principles set forth in the proposed New York Constitution of 1915.

Governor to submit Budget. — The Maryland constitutional amendment provides that the Governor shall present a budget to the Legislature within twenty days after the convening of that body, setting forth a complete plan of proposed expenditures and estimated revenues for the two ensuing years (appropriations are made biennially in Maryland). For the purpose of making up the budget, the Governor may require State officials to submit itemized estimates of their appropriations and such other information as he may desire. The Governor may provide for public hearings on all estimates, and may require the attendance of any official or other person applying for State moneys. After such public hearings the Governor may, in his discretion, revise all estimates except those for the judiciary and the Legislature and for the public schools.

Content and Form of Budget. — As to contents, the budget in Maryland includes not only the estimated appropriations for the executive branch of the government, but also those for the judiciary and Legislature as well. The Governor, however, does not have power to revise the estimates of the legislative and judicial departments or for

[1] *Constitution of Maryland*, Art. III, Sect. 52. For text of amendment see Appendix B.

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the public schools, and such estimates are included in the budget without alteration.

In regard to form, the budget must include not only a complete plan of proposed expenditures and anticipated revenues for each ensuing fiscal year, but must also show the estimated surplus or deficit of revenues at the end of such year. It must also be accompanied by a statement setting forth the following information: (1) the revenues and expenditures for each of the two fiscal years next preceding; (2) the current assets, liabilities, reserves, and surplus or deficit of the State; (3) the debts and funds of the State; and (4) any explanations the Governor may desire to make as to the important features of the budget, or as to methods for reducing or increasing the State's revenue.

Budget to be accompanied by a "Budget Bill." — After the budget has been prepared, the Governor presents it to the presiding officer of each house, together with a "Budget Bill" providing for all proposed appropriations fully itemized and classified. Before final action has been taken by the Legislature, the Governor, with the consent of that body, may amend or supplement the budget in order to correct an oversight or in case of an emergency. All such amendments or supplements are made a part of the original budget bill.

Limitations upon Legislature. — In acting upon the budget bill, the Legislature may not increase the estimates submitted by the Governor except appropriations for the judiciary and for the Legislature itself. In all other cases the Legislature is limited merely to reducing or striking out items. It is in this respect that the Maryland budget system differs from the budget plans of other States. The Commission on Economy and Efficiency, which recommended the adoption of the present constitutional provision, was of the opinion that such a limitation was necessary in order "to prevent the recurrence of deficits in the finances of the State, and to fix responsibility for any derangement of the financial plans of the Governor. . . . It was recognized that the weakness of all American financial methods, in the Congress of the United States, as well as in the Legislatures of the separate States, was to be found in the practice to which all American legislative bodies are addicted of adding either to the amounts demanded by the administrative departments, or to the items for which appropriations were asked."[1]

[1] *Report of Commission on Economy and Efficiency of the State of Maryland*, 1916, Senate Journal, January 28, 1916, pp. 129–134.

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The budget bill when passed by both houses of the Legislature becomes a law immediately, and does not have to be presented to the Governor for his approval. If the Legislature does not act finally upon the bill at least three days before the expiration of the regular session, it is made the duty of the Governor to extend the session for such further period as may be deemed necessary, but no other matter may be considered during the extended session.

Supplementary Appropriations. — Although the Legislature is prohibited from increasing the items recommended in the Governor's budget, it is given power to enact supplementary appropriation bills for purposes not included therein, provided that a majority vote of all the members elected to each house is obtained. Every such appropriation, however, must be embodied in a separate bill limited to a single object and purpose, and provision must be made in the bill itself for a levy of a tax sufficient in amount to defray the expenses thereof. Moreover, neither house of the Legislature may consider any supplementary appropriation until the general budget bill has been acted upon. Unlike the general appropriation act, all supplementary measures must be presented to the Governor for his approval or veto.

Purpose of Maryland Budget Provision. — According to the Maryland Commission on Economy and Efficiency, the following purposes were kept in mind in framing the above amendment: —

To impose upon the Governor the sole responsibility, within the limits of the Constitution and the provisions of existing law, of presenting to the Legislature a complete and comprehensive statement of the needs and resources of the State, based upon:

(*a*) Estimates made by those applying for State moneys;

(*b*) Evidence brought out at public hearings on those estimates; and

(*c*) Administrative revision by the Governor of all estimates except those for the Legislature and the Judiciary and for purposes for which provision has been made by the Constitution or existing law.

To make it impossible for the Legislature so to change the plans proposed by the Governor as to produce a deficit; but

To permit the Legislature to make provision for any purpose not included in the Governor's plan, on the condition that it provide also for the revenue which the accomplishment of its purpose necessitates.[1]

In 1917 the Legislature of New Mexico and the Legislature of Utah established by statute budgets much like that of Maryland.[2]

[1] *Report of Commission on Economy and Efficiency of the State of Maryland*, 1916.

[2] *Laws of New Mexico, 1917*, chapters 81, 114; *Laws of Utah, 1917*, chapter 15.

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Budget Provision in the Proposed New York Constitution of 1915.[1]

Since the recent Maryland budget amendment is very similar to the plan which was included in the proposed New York Constitution of 1915, a brief description of that proposal will be of interest. It should be noted that the Convention was almost unanimous in adopting the budget provision, the vote being 132 to 3; while the press was practically a unit in giving support to the plan.

Article V of the proposed constitution would vest the initiation of the budget in the Governor, the provision being that each department should on or before November fifteenth submit to him "itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special appropriation is desired, classified according to relative importance and with such explanations as the Governor may require." As in Maryland, the Legislature and judiciary were required to submit their estimates, which were to be included in the budget without revision.

The proposed New York provision required that the Governor should present the budget to the Legislature on or before the first day of February, and that it should be accompanied by a "bill or bills" for all proposed expenditures clearly itemized. Like the Maryland system the Legislature could only reduce or strike out items in the budget except items for the Legislature and judiciary, and the bill was to become a law without further action by the Governor. Neither branch of the Legislature was to consider further appropriation bills until the recommendations of the Governor had been disposed of, and, as in Maryland, each supplementary appropriation was to be made in a separate act limited to a single object and purpose.

Although this plan was unanimously favored by the Convention and the press, and received favorable consideration throughout the country, it was defeated when the Constitution as a whole was rejected at the polls.

III. Executive Budget Systems established by Statute.

In addition to Maryland the States of Kansas, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, Ohio and Utah have provided for executive budget systems. In these States, how-

[1] *Proposed New York Constitution, 1915*, Art. V. For text of amendment see Appendix C.

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ever, the budget has merely a statutory basis, and New Mexico is the only State in which the Legislature has bound itself not to increase the items in the Governor's bill, except those relating to the legislative or judiciary departments, and to enact no other appropriation bills until the Governor's bill is disposed of. In all the other States the budget is only a *recommendation* from the executive, and the extent to which it is followed depends upon whether the Legislature and the Governor co-operate with each other. The laws of each of the States will be reviewed briefly.

The New Jersey Budget Law.[1]

The New Jersey budget law was passed in 1916 and provides that the Governor shall be responsible for the preparation of the tentative budget and its presentation to the Legislature. Each department of the State government and every board, commission, institution, or other State agency desiring an annual appropriation must present its requests to the Governor on or before November 15 of each year. It is further required that unofficial organizations and individuals shall likewise present their requests to the Governor. The State treasurer and comptroller must furnish the Governor with complete information as to the probable revenue for the ensuing two years and as to the present financial condition of the State.

Upon receipt of the requests, the Governor considers them and makes his recommendations, with the limitation that he shall not recommend appropriations in excess of the anticipated revenue. He may summon witnesses and conduct hearings, or appoint some other person to make such examinations. If the additional duties prove too burdensome, the Governor is authorized to appoint officers of the State government, together with not more than two assistants, to act as a committee to aid him in preparing the budget.

Content and Form of Budget. — As in Maryland, the budget includes not only the estimates for the executive department, but also for the legislative and judiciary. Since there is no provision to the contrary, it is to be inferred from the statute that the Governor has the same power to revise the estimates of the legislative department as those of the executive branch of the government.

Budget to be transmitted as a Special Message. — The Governor is required to transmit the budget to the Legislature on the second

[1] *Acts of New Jersey, 1916*, chapter 15.

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Tuesday in January in the form of a special message. "The message of the Governor shall be in such form that it can be easily understood by the average citizen, and shall be printed and a copy thereof presented to each member of the Legislature" and given such other publicity as may be deemed wise. If he thinks it necessary, the Governor may from time to time transmit special messages requesting additional appropriations for purposes not anticipated at the time the provisional budget was submitted to the Legislature.

Appropriations to be made in Single Act. — Provision is made that all appropriations shall be included in a "General Appropriation Bill," and it is the intent of the act that no supplemental, deficiency or incidental bills shall be considered. No limitation is placed upon the Legislature in considering the Governor's budget and that body may increase as well as strike out or reduce items that are recommended.

Transfers. — The New Jersey law recognizes the fact that an itemized budget is apt to be too rigid without a system of transfers. In order, therefore, that some degree of flexibility may be had in appropriations, any department or other State agency receiving an appropriation may apply to the State House Commission for leave to transfer a part of any item granted to such department to any other item in its appropriation, provided, however, that no sum appropriated for any permanent improvement shall be used for maintenance or for any temporary purpose.

In 1917 the Legislature of Kansas enacted a law providing for a budget closely resembling that of New Jersey.[1]

The Ohio Budget Law.[2]

The Ohio budget system is very similar to that of New Jersey. At the beginning of the session of the General Assembly, the Governor is required to submit his budget of current expenses for the ensuing biennial period, together with the original estimates from the various departments, institutions, commissions and officers of the State. The heads of departments, institutions, etc., are required to report their estimates on or before November 15 in itemized form and on blanks, provided for that purpose; while the State Auditor is required to furnish the Governor with complete information as to the anticipated revenues and expenditures for the four preceding years.

[1] *Session Laws of Kansas, 1917*, chapter 312. [2] *Legislative Acts of Ohio, 1913*, pp. 658, 659.

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Special Provisions for obtaining Information. — The Governor may at any time appoint competent disinterested persons to examine without notice the affairs of any department, institution or office in order to ascertain facts and to make recommendations relative to increasing the efficiency and curtailing the expense of such department. The Governor may fix the compensation of such appointees and cause their salaries to be paid out of any appropriation that is made for the executive department. In pursuance of this provision, the Governor of Ohio has appointed a Budget Commissioner who looks after the compiling of data and the detailed preparation of the provisional budget.

The Ohio law is much more brief than those of the other States and does not contain any provisions as to the form of budget, budget hearings, consolidated appropriation bills, or limitations upon the Legislature.

The Nebraska Budget Law.[1]

The Nebraska budget law, like that of New Jersey and Ohio, makes the Governor responsible for the preparation of the budget. Important features of the law are: (1) that the Governor must give brief reasons for each item of expenditure in which the proposed appropriation is different from that of the previous biennial period, and (2) provisions requiring the estimates to be classified in such manner as to exhibit clearly the items of proposed expenditure and to distinguish between those for salaries, maintenance, permanent improvements, and new governmental undertakings.

Budget to be presented as Part of Special Message. — As in New Jersey the tentative budget shall be presented to the Legislature at the opening of the session as a part of a special budget message from the Governor. This message must be presented in form convenient for use and copies sent at the time of its delivery to members of the Legislature and to the press.

Provision is not made in the Nebraska budget law for a consolidated appropriation act and there are no limitations upon the Legislature.

The Minnesota Budget Law.[2]

The budget act of 1915 requires the heads of departments, boards, commissions and other officers under whose direction public money

[1] *Laws of Nebraska, 1915*, chapter 229.
[2] *Session Laws of Minnesota, 1915*, chapter 356.

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is expended to submit estimates to the Governor not later than December 1 in each year immediately preceding the next regular session of the Legislature. These estimates are required to show the expenditures for the purposes indicated in each year of the biennial period just closing and how those expenditures have been met. They are also to show the amounts needed for each year of the biennial period next ensuing and the anticipated revenues from which they can be obtained. The form in which the estimates are to be presented is prescribed in considerable detail. Not later than the end of December the Governor is required to assemble the estimates, make such revision as he sees fit, and embody the whole in a budget bill which is to be printed and submitted to the Legislature not later than the first day of February.

The Governor complains that the great defect of this law is that he is not given sufficient time for the consideration of the estimates submitted to him. In 1917 the appropriations finally approved by the Governor exceeded his budget by more than two and a half million dollars.

The Massachusetts Budget Law.

Financial Procedure in Massachusetts. — Although financial procedure in Massachusetts has been regarded as much better than that of most American States, there is no provision for a budget system in the Constitution nor had such a system been established by statute until the passage of chapter 244 of the General Acts of 1918. Steady progress in that direction, however, had been made in recent years. Chapter 719 of the Acts of 1912 required the heads of all State departments and activities to submit to the Auditor on or before November 15 in each year their estimates for the coming year, and further required the Auditor to file these estimates, together with a statement of estimated revenue, and report the same to the General Court when convened. Estimates for maintenance have been set forth in House Document No. 1; those for capital outlays and new purposes in House Document No. 2. Under the legislative rules all appropriation bills have been reported to the House by the Committee on Ways and Means, and they then followed the usual course of legislation. This procedure has enabled the Legislature to act with some intelligence in the making of appropriations. The sound policy of referring all money bills to one

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committee has centralized financial authority and responsibility, and has to some degree offset the lack of a budget system.

Recent Budget Legislation in Massachusetts. — The last two years have seen marked progress toward improved financial methods. Until 1917 a large amount of revenue — more than $5,000,000 annually, derived from special funds — was expended under standing statutory authority, without estimate or appropriation. Chapter 277 of the General Acts of 1917 brought these funds under legislative control by requiring detailed estimates and annual appropriations. The funds themselves were in the main abolished and the moneys therein transferred to the general treasury.

The Legislature of 1917 also created a Joint Special Committee on Finances and Budget Procedure, which submitted to the Legislature of 1918 two reports:

(1) House Document No. 17, a Budget Plan for 1918, the first complete State budget, it is believed, ever submitted in Massachusetts.

(2) House Document No. 1185, the report of the committee with its recommendations for legislation.

Defects in Massachusetts Procedure. — The Joint Committee in its report called attention to grave defects in the procedure in vogue in past years:

(1) The lack of adequate revision of departmental estimates.

(2) The lack of any provision for the preparation of a comprehensive financial plan or budget, and the consequent difficulty of the Ways and Means Committee in considering financial measures piecemeal throughout the session.

(3) The entire absence of executive responsibility, the Governor having no connection with the preparation of estimates, and his authority and responsibility being limited to approval or disapproval of appropriation bills after enactment.

(4) The unusually large number of appropriation acts, for example, one hundred and thirty-six in 1915.

(5) The lack of constitutional authority in the Governor to veto or reduce items in appropriation bills.

(6) The large number of private bills introduced by members of the Legislature which call for public appropriations and which have no relation to the departmental estimates.

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The Act of 1918. — The Joint Committee submitted a bill which became law as chapter 244 of the General Acts of 1918: "An Act to establish a Budget System for the Commonwealth."[1] This act provides that the heads of all State activities shall submit to the Supervisor of Administration, on or before October 15, in each year, their estimates for the coming year, and that the Auditor shall compile the same, together with a statement of "his estimates for the ordinary and other revenue of the Commonwealth" and "a statement of the free and unencumbered cash balance and other resources available for appropriation."

The act further provides, in section 4, that —

> The supervisor of administration shall study and review all estimates and shall . . . prepare a budget for the Governor setting forth such recommendations as the Governor shall determine upon. . . . The budget shall be submitted by the Governor to the General Court not later than the second Wednesday in January of each year and it shall embody all estimates, requests and recommendations for appropriations or other authorizations for expenditures from the treasury of the commonwealth. The budget shall be classified and designated so as to show separately estimates and recommendations for: (*a*) expenses of administration, operation and maintenance; (*b*) deficiencies or overdrafts in appropriations of former years; (*c*) new construction, additions, improvements and other capital outlay; (*d*) interest on the public debt and sinking fund and serial bond requirements; and (*e*) all requests and proposals for expenditures for new projects and other undertakings; and shall include in detail definite recommendations of the governor relative to the amounts which should be appropriated therefor. The budget shall also include definite recommendations of the governor as to the financing of the expenditures recommended and the relative amounts to be raised from ordinary revenue, direct taxes or loans. All appropriations based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill to be designated the general appropriation bill.

This act will create a complete budget system and will obviate many of the defects in the present procedure. A constitutional amendment, however, will be required to give authority to the Governor to disapprove items in appropriation bills. The Joint Special Committee pointed out this fact in its report (House Document No. 1185, page 23), as follows:

> The lack of this power in the Executive has not been severely felt in Massachusetts as yet owing to the fact that almost every appropriation has been reported in a separate bill. Under a budget system with but few appro-

[1] For the text of this act see Appendix E.

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priation bills, the Executive must have this right to disapprove items; if not he may be obliged to veto an entire bill merely on account of one item which does not meet his approval. Without this right in the Executive no budget system can be wholly successful. A constitutional amendment will be required to bring this about. The Committee expresses the hope that the resolution reported by the Finance Committee of the Convention will, with slight perfecting amendments, be adopted by that body and ratified by the people.

The scope of the act is also limited in two ways. It does not curtail the power of the Legislature to increase items in the budget, nor to enact subsequent financial legislation; nor does it curb the evil of private appropriation bills, which in the year 1917 contained requests for more than $26,000,000 entirely beyond the departmental estimates in House Documents Nos. 1 and 2, and therefore entirely beyond the scope of the executive budget created by the act.[1]

IV. Budget Laws providing for a Budget Board or Committee.

In the second group of States that have provided for budget systems by statute, the budget is drawn up and initiated by a board or committee which usually includes the leading executive officers of the State and the chairman of the finance committees of the Legislature. This is the plan used in Wisconsin and originally in New York, which were the first States to adopt budget systems, also in Connecticut, North Dakota, South Dakota, Tennessee, Vermont and Washington. The underlying idea of this scheme is that the budget will have greater weight before the Legislature if it is initiated by a joint body of administrative and legislative officers.

Wisconsin and Louisiana — Board of Public Affairs.

Wisconsin provided in 1911 for a Board of Public Affairs, one of the duties of which is to prepare a compilation of estimates for the Legislature. This board is a rather large body consisting of nine members — the Governor, the Secretary of State, the chairmen of the finance committees of the Senate and House, the Speaker of the Assembly, the President *pro tempore* of the Senate and three members appointed by the Governor.[2]

The Board of Public Affairs did not at first attempt to make recommendations in the budget, but merely compiled the requests of the

[1] Since the above account was prepared, a budget system has been established in Massachusetts by constitutional amendment. See Appendix F.

[2] *Session Laws of Wisconsin, 1911*, chapter 583. See also *Session Laws of 1913*, chapter 728, and *Session Laws of 1915*, chapter 606.

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various departments.[1] In 1915, however, an act was passed giving the Board express power to make recommendations and providing that the budget should include any recommendations which the Governor-elect might wish to submit.

In 1916 Louisiana passed a law creating a Board of State Affairs and granting it much the same powers in regard to the submission of the budget that the Wisconsin board now has. The Louisiana Board of State Affairs, however, is much smaller than that in Wisconsin, consisting of only three members, all of whom are appointed by the Governor.[2]

Connecticut — State Board of Finance.[3]

The law establishing the Connecticut budget system was enacted in 1915, and provides that the budget shall be prepared and recommended by the State Board of Finance, which consists of the Treasurer, Comptroller, Tax Commissioner and three citizen members appointed for six years by the Governor. There are no provisions as to the form or contents, and according to the terms of the statute the budget is little more than a compilation of requested appropriations with recommendations by the Board of Finance.

Joint Committee on Appropriations. — A special feature of the Connecticut law is the provision that the budget when submitted to the Legislature shall be considered by a joint standing committee on appropriations. The statute does not require that the budget shall be accompanied by a proposed bill, but provision is made that all bills and joint resolutions making appropriations must be referred to this joint committee before passage unless such reference is dispensed with by a two-thirds vote of each branch of the Legislature. During the sessions of the Legislature the Board of Finance sits with the joint committee on appropriations in considering the various bills and resolutions that are referred to that committee.[4] The purpose of this provision is to centralize the handling of appropriations in a single committee rather than to scatter the work among a large number of authorities, as is usually the case.

[1] Frederick A. Cleveland, "Budget Idea in the United States," in *Annals of the American Academy of Political and Social Science*, November, 1915, p. 31.

[2] *Acts of Louisiana, 1916*, act No. 140.

[3] *Public Acts of Connecticut, 1915*, chapter 302.

[4] The Board of Finance and the joint committee on appropriations may also originate and report any bill or joint resolution which they may deem necessary.

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North Dakota and South Dakota — Budget Board.

The North Dakota budget law, which was enacted in 1915,[1] provides for a State Budget Board of seven members, — the Governor, Lieutenant-Governor, the two chairmen of the appropriation committees of the Senate and House of the preceding legislative Assembly, the Speaker of the House, the State Auditor and the Attorney General. The Governor is chairman of the Board and the State Auditor is the secretary.

The usual provisions are found requiring that heads of departments, commissions and institutions shall submit their estimates to the Auditor, who in turn presents them to the Budget Board. After the estimates have been received by the Budget Board, it then submits to the Legislature, not later than the tenth day of the session, a tentative budget showing the appropriations which it recommends and the anticipated revenues to meet the same. The original requests of the various officers and boards must be included in every case for the purpose of comparison with the amounts allowed by the Budget Board.

Form and Contents. — The law requires that the budget shall contain not only estimates for current expenses but also for the payment of interest upon the funded debt of the State and for the general sinking funds, the intention being to make the budget include all of the annual charges upon the treasury.

There is no provision requiring the submission of an appropriation bill as a part of the budget, nor are there any limitations upon the Legislature in dealing with the proposed appropriations.

In 1917 the Legislature of South Dakota created a Budget Board with powers and duties similar to that of North Dakota. This Board is composed of the Governor-elect, the Auditor, the chairman of the Tax Commission, and the chairmen of the Senate and House committees on appropriations. Any vacancy is to be filled by the Governor-elect.[2]

Budget Law of Washington — State Board of Finance.[3]

The budget law of Washington, which was adopted in 1915, is in general similar to that of North Dakota, the chief difference being

[1] *Laws of North Dakota, 1915*, chapter 61.
[2] *Laws of South Dakota, 1917*, chapter 354.
[3] *Session Laws of Washington, 1915*, chapter 126.

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that provision is made for a small ex-officio board of three members instead of a large body, as in the former State. The preparation of the budget is intrusted to a State Board of Finance, consisting of the Governor, the State Auditor and the State Treasurer.

One of the important features of the Washington law is the requirement that copies of the budget shall be mailed to each member of the Legislature at least fifteen days before the convening of that body instead of at the beginning of the session, as is the practice in most of the other States. The purpose of this arrangement is to give the members more time to become acquainted with matters that are to be referred to them.

Vermont Budget Law — State Budget Committee.[1]

Vermont is the only New England State except Connecticut which has adopted a budget system for the control of public expenditures. A law enacted in 1915 provides for a State Budget Committee composed of the Governor, Auditor, State Treasurer, chairman of the finance committee of the Senate, chairman of the appropriation committee of the House, chairman of the ways and means committee of the House and the State Purchasing Agent. The Governor is chairman of the committee and the Auditor is the secretary.

Presentation and Preparation of Estimates. — All heads of departments, boards, institutions, etc., are required during the month of October to report to the secretary of the Budget Committee the amounts required by their departments for the ensuing two years and the amounts appropriated and expended for the current year and for the two preceding fiscal periods. All estimates are to be presented on blanks prepared and furnished by the Committee and shall show the needs of the department under the heads of (1) salaries and wages; (2) permanent improvements; (3) all other expenditures; and (4) contingencies. Provision is further made that in addition to requests from State officials, the Budget Committee shall also receive statements from any individual, corporation, association or institution desiring an appropriation. Any person having a claim against the State is likewise requested to file a statement of the amount of such claim, which shall be included in the budget.

An attempt is made to eliminate the practice of filing requests for appropriations directly with the Legislature by including the limita-

[1] *Acts and Resolves of Vermont, 1915*, No. 26, pp. 87–91.

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tion that "no State officer, department or institution shall apply to the Legislature for any appropriation unless the request for the same has been filed with the secretary of the (Budget) Committee in accordance with the provisions of this act; unless the occasion for such request shall have arisen subsequent to the first day of November in the year next preceding the session of the Legislature at which the same is requested."[1]

Review of Estimates. — As soon as all requests have been filed, the Budget Committee reviews the same and prepares a budget which shows the items estimated to be necessary for each department for the ensuing biennial period, together with an itemized statement of the revenues which it is expected will be received. The Committee may revise, increase, decrease or eliminate the sum requested by any department, but wherever there is any difference between the requests filed by a department and the recommendations of the Committee, the Committee is required to give its reasons for such differences. In order that the Legislature may have complete data upon which to base its action, provision is made that the tentative budget shall include a statement of the expenditures of each department for the current fiscal period and the two preceding periods, and also an itemized statement of the amounts of all unexpended balances of former appropriations.

The budget report, when completed, must be printed and sent to each member-elect of the incoming Legislature and to the clerk of each town before December 10; and when the Legislature convenes and has organized, it shall be presented to the newly organized committee on the budget.

Final Revision and Submission of Budget. — Since the houses of the incoming Legislature may appoint new chairmen of the committees on finance, ways and means, and appropriations, and thus change the membership of the budget committee which drew up the tentative budget, the act provides that the newly formed Budget Committee shall have power to review the budget as originally prepared. With this end in view, provision is made that the newly formed Budget Committee shall at the beginning of the legislative session receive the tentative budget from the outgoing committee and after examination shall make such revision as it deems advisable and draw up a consolidated statement of the estimated income and expenditures as finally agreed upon.

[1] *Acts and Resolves of Vermont, 1915*, No. 26, sect. 6.

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Although there is no requirement that a general appropriation bill should accompany the budget, it is provided that the Budget Committee shall, as soon as the time for the introduction of measures in the Legislature has expired, prepare a schedule of all amounts contemplated to be appropriated by the various bills introduced to that date, together with the recommendations of the Budget Committee as to the advisability of the same. As soon as the Legislature has disposed of the proposed appropriations, such of them as have been passed shall be included by the Budget Committee in a single budget bill, which shall contain all the expenditures of the State for the ensuing biennial period, and which shall be presented to the Legislature for its consideration, revision and final passage. Thus it is seen that all appropriations are brought together into a consolidated appropriation act instead of being scattered among a number of separate statutes, as is done in Massachusetts.

New York Budget Law, 1916.[1]

The recent New York budget system presents some points of difference from those of the other States described above. After experimenting with a board of estimate and apportionment, somewhat similar to that of Wisconsin, the New York Legislature in 1916 adopted a budget law which merely strengthens the ordinary legislative process of dealing with appropriations.

The authorities charged with the preparation of the budget in New York are the Finance Committee of the Senate and the Ways and Means Committee of the Assembly. These committees acting jointly or separately are required not later than March 15 to prepare the budget of annual expenditures and revenues and submit it to their respective houses. Provision is also made that the Governor shall likewise submit to each house of the Legislature a statement of the total amount of appropriations desired by each department, commission, office, etc., and may make such recommendations as he sees fit as to additions or reductions. The chief budget-making authorities, however, are the Finance Committee and the Committee on Ways and Means. The part given to the Governor is no more than he already possessed, and the responsibility for the preparation and recommendation of the budget is assigned to the legislative committees.

[1] *Laws of New York, 1916*, chapter 130.

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Staff Assistance. — In order that the two committees may perform the functions of a budget committee, the law provides that they shall be continued during the recess of the Legislature; that their respective chairmen may appoint sub-committees to perform such duties as may be prescribed, and that each committee shall have a special staff, the duties of which are to compile information and data, make investigations and examinations, and aid the committees generally in the preparation of the annual budget and in the performance of their other duties.

Legislative Procedure on Appropriation Measures. — After the estimates have been received and adjusted, the committees are required to supplement them with a single bill providing for the appropriations that are recommended. The law goes into considerable detail as to the procedure according to which appropriation bills shall be passed, and it is in this respect that the New York system is superior to those of most other States with the exception of Maryland.

In the first place the appropriation bill must remain before the Committee of the Whole of the Senate and on the order of second reading in the Assembly for its consideration at least five full legislative days, and on each of these days shall be the special order of the day. All meetings of either house for the consideration of the appropriation bill must be open to the public.

The New York budget law also differs from those of the other States in placing limitations on the Legislature. It is provided that while the bill is before the Committee of the Whole of the Senate or on the order of second reading in the Assembly, it may be amended either by inserting additional items or by increasing, reducing or eliminating items, but on third reading no amendments are in order except to reduce or eliminate an item without unanimous consent. The purpose of these provisions is to give the appropriation measures ample consideration and publicity and to prevent the practice of "tacking" on measures to the general appropriation bill.

Illinois Budget System.[1]

The State of Illinois in 1913 attacked the problem of budget-making from a point of view somewhat different from that of the typical budget system. In that year the General Assembly adopted

[1] *Annals of American Academy of Political and Social Science*, November, 1915, John A. Fairlie, "Budget Methods in Illinois," pp. 85–90; and Finley F. Bell, "Illinois Budget," pp. 73–84. See also *Illinois Budget*, 1915–16.

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an act creating a Legislative Reference Bureau and assigned to that bureau the duty of preparing, printing and distributing a detailed budget for the use of the Legislature. Although this marked a step in the proper direction, the first budget which was prepared was a mass of detailed items not very well classified and more likely to bewilder than to enlighten the appropriation committees.[1]

At the session of the General Assembly in 1917 an administrative code was enacted which displaced the old system and provided for a more complete centralization in the matter of budget-making. According to this act, which became effective on July 1, 1917, the newly created Department of Finance under the supervision of a director appointed by the Governor is given the duty of revising the estimates of the various departments and preparing a budget which will be submitted to the General Assembly by the Governor at the beginning of each biennial session.[2]

Oregon Budget Law.[3]

Oregon, has also made some advance in furnishing the Legislature with more complete information as to appropriations, although not possessing a complete budget system.

Under the Oregon statute, which was enacted in 1913, the heads of departments are required to file their requests for appropriations with the Secretary of State who prepares the budget. The law does not give the Secretary authority to make recommendations, but merely directs him to compile the estimates in systematic form, together with comparative data. The Secretary submits his tabulation to the members of the Legislature and to the Governor, and the Governor is also required to present the tabulation to the members of the Legislature with such recommendations as he deems proper. Thus the Oregon law makes the Secretary of State responsible for the preparation and tabulation of estimates and their initial submission to the Legislature, but provides that the Governor shall also transmit the budget with such general recommendations as he personally thinks advisable.

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[1] *Annals of American Academy of Political and Social Science*, November, 1915, John A. Fairlie, "Budget Methods in Illinois," pp. 88–90.

[2] "The Civil Administrative Code," enacted by the Illinois General Assembly and approved March 7, 1917, sects. 37–38, *Laws of Illinois, 1917*, p. 36.

[3] *General Laws of Oregon, 1913*, chapter 284. Also Estimate of Expenditures (Budget), State of Oregon, 1915–16. Also letters from Mr. T. B. Kay, State Treasurer, August 30, 1916.

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The Budget Commission of Tennessee.[1]

In 1917 a bill drawn up by the State Treasurer was enacted by the Legislature of Tennessee by which act there was established a State Budget Commission composed of the Governor, the Comptroller, the Treasurer, the Secretary of State and the Auditor. The Commission is required to make biennially a survey of all State offices, departments and institutions and may require the production of papers and the attendance of witnesses. Each State officer or organization is required to submit to the Commission before December 1 biennially a statement of receipts and expenditures during the past two years and an estimate of its expenditures and revenues for the next two years. At the same time the Comptroller is required to submit to the Governor a statement showing each available appropriation balance and the receipts and expenditures of each appropriation account for the preceding two years. All persons having claims against the State which require legislative action are required to present them to the Comptroller, with a statement of the amount and the facts on which they are based.

The Tennessee budget law contains several features not found in the laws of other States. The Budget Commission is required to hold public hearings, and shall invite the Governor-elect and members of the Legislature to attend. It shall prepare a tentative budget and send printed copies to each member of the Legislature. Later when the Legislature assembles, the Governor as chairman of the Budget Commission is to transmit the budget in its final form. This shall be considered at joint public sessions of the appropriation committees of the two houses, and the Budget Commission shall have the right to attend and be heard on all matters coming before such joint sessions.

V. The Boston Segregated Budget.

American cities have been much more radical than the States in introducing budget methods, and since the financial problems of a large metropolitan city are somewhat similar to those of the State a brief review of the new segregated budget system of Boston will perhaps be of some value.

Mayor initiates Budget. — The Boston Charter Amendments of 1909 establish an "executive budget," the provision being that "all

[1] *Public Acts of Tennessee, 1917*, chapter 139.

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appropriations, other than for school purposes, to be met from taxes, revenue or any source other than loans shall originate with the mayor, who within thirty days after the beginning of the fiscal year shall submit to the city council the annual budget of the current expenses of the city and county, and may submit thereafter supplementary budgets until such time as the tax rate for the year shall have been fixed."

The mayor not only initiates the budget, but the power of the council in considering the same is somewhat restricted. According to the charter, the council may reduce or reject any item in the budget, but may not increase or add to the same without the mayor's consent.

Lump-sum Method. — Prior to 1916 the method of preparing the annual budget was inadequate to secure proper control over expenditures. Although uniform estimate sheets were provided for, some departments did not use them, on the ground that they did not meet their requirements, and presented their requests in some other form. The department heads were not fully examined as to their estimates, and competent analyses were not made of the same. Moreover, the examinations that were made were generally with reference only to the total amounts requested and not to the items in detail. The greatest defect was that appropriations were made in lump sum instead of itemized form. [1]

The "lump sum" budget system as used in Boston prior to 1916 disclosed many shortcomings. It afforded no real protection against the use of funds for purposes other than those for which they were granted, and did not prove a dependable check upon the tendency of department heads to exceed their appropriations. [1]

New Segregated Budget. — The weakness of the "lump sum" method of appropriating funds was recognized, with the result that a special budget commission was appointed by the mayor. In October, 1915, this commission recommended the establishment of a segregated budget system which was adopted and put into operation commencing with the fiscal year 1916. [2]

Under the new system provision is made for a set of uniform estimate sheets to be filled out by the heads of departments or divisions showing their requests for appropriations itemized under the

[1] "Report of Boston Finance Commission on Segregated Budget System," *Boston City Record*, 1914, pp. 1048–1050.

[2] *Report of Commission on Form of the Annual Budget*, Boston, Mass., October 1, 1915.

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general headings of personal service, service other than personal, equipment, supplies, materials, special items and incidental expenditures, together with comparative data as to the appropriations and expenditures of the previous year.

Revision of Estimates. — As soon as the estimate sheets have been received they are gone over carefully by the budget commissioner and mayor and revised so as to bring the total within the exact amount that can be raised under the law. The estimates are then put in the form of an appropriation ordinance and presented to the city council where they are considered by the council sitting as the committee on appropriations.

The Finance Commission, through its investigators, studies each department's estimates as revised by the mayor and sends to the city council a typewritten report on each item. With these reports at hand the council holds hearings and questions the heads of the departments, or their representatives on each item, sometimes at great length. In 1916 the council also had the services of a special investigator whose duty it was to look up any facts or information which the members of the council desired. When all the department heads had been heard and a counter report from them received in answer to the criticisms of the Finance Commission, the committee on appropriations went through the schedules other than the payroll schedule, cutting off as much as it saw fit. The payroll schedule was then reduced to the amount which it was thought would bring it within the power of the department head to operate his force efficiently and economically. The budget was then passed by the council and accepted by the mayor.

Results. — Thus it is seen that Boston has developed a system which provides for a much greater degree of control over expenditures. After a year's experience under the segregated budget the administration and department heads are almost unanimous in favor of it.

VI. Results under Budget Systems.

Since most of the budget laws have been adopted during the last two years it is too early to draw very definite conclusions as to results except in one or two instances. Certain general tendencies and observations, however, may be noted.

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Ohio.[1]

In Ohio, which has had about as long an experience with a budget system as any State, there appears to have been considerable improvement. As described above, the Governor is responsible for the initiation of the budget. In pursuance of statutory authority he has appointed an expert Budget Commissioner to assemble information and prepare the budget. In fact the first budget, which was presented in 1915, was almost wholly the recommendation of the Budget Commissioner, and although the Governor made a few criticisms and suggestions it was submitted to the Legislature as a recommendation from the Commissioner rather than from the Governor. Experience showed that it was a mistake not to give the budget more definite executive sanction, with the result that the 1917 budget was submitted directly by the Governor after having been prepared by the Budget Commissioner.[2]

Although the budget is merely advisory in Ohio and does not involve any limitations upon the Legislature, it is reported that the finance committee accepts its recommendations as "prima facie evidence of the departments' needs and they are increased only after a clear case has been made by the departments showing them to be insufficient. It will be readily seen that this in itself goes a long way towards securing economy and efficiency and stopping 'pork-barrel' appropriations."[3] According to the present Budget Commissioner, "the results obtained by the budget system in this State have been specific appropriations with sufficient flexibility to take care of the same. By this plan smaller appropriations in the aggregate can be made for the needs of the State without impairing in any way the efficiency of the departments and institutions."[4] The Director of the Ohio Institute for Public Efficiency states that "the first Budget Commissioner is reported to have been able by his review of the departmental estimates to reduce them by almost a million dollars. Reductions of lesser amounts are reported to have been made by his successors."[5]

[1] Information as to workings of Ohio Budget received through letters from E. M. Fullington, Budget Commissioner of Ohio; and from Wm. T. Donaldson, Assistant Budget Commissioner, August and September, 1916; from State Auditor; Director of Ohio Institute for Public Efficiency, Columbus, Ohio; Secretary of Cincinnati Chamber of Commerce; and Dr. S. Gale Lowrie, University of Cincinnati.

[2] "Executive Budget, 1917-18," submitted by Governor James M. Cox.

[3] Communication from Assistant Budget Commissioner, August, 1916.

[4] Communication from Budget Commissioner, September 2, 1916.

[5] Communication from R. E. Miles, Director of Ohio Institute for Public Efficiency, Columbus, Ohio, September 8, 1916.

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On the whole, the general opinion in regard to the Ohio budget system is favorable. The chief criticisms are that the first budget was not made an executive recommendation as the law intended, and that the appropriation bills as finally enacted were over-itemized, especially those in regard to salaries and wages. The former objection has been removed by the budget which Governor Cox has recently submitted to the Legislature; while the rigidity of itemized appropriations has been reduced by providing for a system of transfers under the direction of a controlling board made up of the Budget Commissioner, the Auditor of the State, the Attorney General, and the chairmen of the finance committees of the House and Senate.

Wisconsin.

In Wisconsin, where the budget system has been in actual operation since July 1, 1913, the Governor's office has the following statement to make:[1] —

Prior to this time (1913) a single department might have one or a dozen appropriations for the same purpose, as, for example, the department would have an appropriation for the general running expenses; likewise appropriations for the salaries of the commissioners and another appropriation for the salaries of clerks. In the case of almost every department, board and commission, in addition to the appropriations of stated amounts, they were furnished stationery, office supplies, postage, etc., by the Superintendent of Public Property. In the matter of printing, they were likewise required to be furnished unlimited amounts by the State Printing Board. In consequence of this system, or possibly lack of system, departments, boards and commissions were little concerned with the cost of printing or the cost of stationery and office supplies, as these amounts did not appear charged against their accounts.

The budget plan aims to put all State boards, departments and commissions, wherever practicable, upon a limited appropriation basis; all expenses incurred by a department, board or commission being chargeable to its particular appropriation. Under the budget plan, appropriations are divided into three main classes according to the nature of the expenditure, namely: (1) operation, to cover the running expenses of the board, department or commission; (2) capital, for the purpose of new property; and (3) maintenance, for the upkeep of permanent property. By making appropriations under these three main headings, legislative control over appropriations is obtained, in that the law does not permit the expenditure of either capital or maintenance appropriations for operating purposes.

In speaking of the budget system in general, it may be stated that it has resulted in savings for the State of Wisconsin in that the system demands greater

[1] Communication from the Secretary to Governor Philipp of Wisconsin, September 9, 1916.

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accountability. Every two years, the budget is submitted to the Legislature. In this budget are contained the actual disbursements as made from previous appropriations. The departments, knowing that they will be called to account by the Legislature, are, as a rule, more careful to see that the letter and intent of the law is carried out. The Auditor of State can likewise make a stricter audit of the accounts in that he has definite information before him as to the real purpose of the appropriation. Before a bill is passed for payment, it is determined whether or not this particular expenditure was included in the department budget.

The budget system has introduced a reform in procedure which likewise results in saving to the State. Formerly, during the legislative session, it was the custom for the heads of departments to lobby for their particular appropriation measures. This has been done away with to a very large extent. The majority of the departments, after their budgets have been submitted to this office, pay very little attention to the same until they are called to the Joint Finance Committee of the Legislature.

At the present time, I think we can say there is not a single department that is opposed to the budget system. We still have problems before us to be solved in connection with the system. It is still a question as to just how rigidly departments should be tied up in their appropriations.

The Wisconsin State Board of Control, which has charge of the fifteen charitable and correctional institutions of the State, involving the expenditure of a large proportion of the total annual appropriations and the employment of a great number of persons, is of the opinion that many improvements in financial administration have resulted from the introduction of the budget system. The Secretary of the Board of Control expresses the view that "the budget system results in a closer accounting and better means of fixing responsibility. Under a budget system there should be an efficient accounting system. Within the last three years we have put in what we believe to be the most modern accounting system for State institutions that is in existence, and we find that the combined budget system and new accounting system work out very satisfactorily.

"When appropriations are made in a lump sum the Legislature has no information as to the details or the detailed expenditures. When appropriations are made under the budget system the detail of the budget shows the amount to be expended in the various departments of the institutions." [1]

On the other hand, criticism has been made as to the divided responsibility involved in the Wisconsin budget system, and also as

[1] Letter from M. J. Tappins, Secretary of Wisconsin State Board of Control, September 9, 1916.

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to the fact that the Board of Public Affairs in presenting the budget for 1915–17 did not make definite recommendations, but merely tabulated the requests as filed with it. In making the appropriation for 1915–17, for example, it is reported that the legislative committees and the Governor attempted to outdo one another in recommending retrenchment with the result that the departments were granted rather meagre allowances. Before the 1915 session of the Legislature had ended it was necessary, therefore, to provide for an emergency fund, unlimited in amount, from which additional funds might be drawn upon certification of a board consisting of the Governor, the Secretary of State, and the State Treasurer.[1]

California.

California has not established a budget system by statute, but the Governor by executive authority has introduced a plan which is reported to have produced satisfactory results.

The circumstances connected with the preparation of the 1915–16 budget are of interest as an illustration of the improvements that have been attributed to the introduction of a budget system. The requests for appropriations as submitted by the heads of departments and institutions for the period of 1915–16 amounted to $17,365,776. As a result of its review and adjustment the Board of Control and the Controller cut these requests to $15,458,200, or a reduction of approximately $2,000,000. Requests for special appropriations totaled $11,334,405, but only $3,981,426 was recommended by the Board of Control, or $7,352,978 less than was asked for. This severe pruning was a result of a very painstaking investigation, the Board of Control and the Controller always having in mind the probable income of the State and the needs of the departments. The Legislature, instead of adding to the budget prepared by the Board of Control, made a slight reduction, so that the general and special appropriation bills as finally passed by that body totaled $341,216 less than the budget recommendations, which in the words of the Controller "was hewing pretty close to the line." [2]

[1] Information obtained from typewritten report on file in office of Massachusetts Supervisor of Administration, September, 1916.

[2] John F. Neylan, "California's State Budget," in *Annals of American Academy of Political and Social Science*, November, 1915, pp. 69–72. Also letter from Mr. John S. Chambers, State Controller of California; and address delivered by the Controller before the National Tax Association at San Francisco in 1915.

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Conclusion.

The above summary of results in those States where budgets have been actually prepared and submitted indicates that the following has been accomplished: (1) the Legislature is provided with more complete information as to the needs and resources of the State; (2) "logrolling" has been reduced; (3) greater control over and responsibility for expenditures is made possible; (4) improved accounting methods have accompanied the introduction of a budget system; and (5) the finances of the State in general are conducted on a more businesslike basis. Whether or not the preparation and initiation of the budget should be intrusted to the Governor alone or to a board or committee, and the extent to which the powers of the Legislature should be restricted are open questions, but the tendency seems to be in the direction of an "executive budget," which would place the responsibility upon the Governor.

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APPENDIX A.

SUMMARY OF BUDGET PROVISIONS.

STATE.	Method of Establishment.	Responsibility for Initiation of Budget.
Connecticut,	Public Acts of 1915, Ch. 302,	State Board of Finance.
Illinois,	Laws of 1917, Ch. 2,	Governor and Department of Finance.
Iowa,	Acts and Joint Resolutions of 1915, Ch. 74,	Governor.
Kansas,	Session Laws of 1917, Ch. 312,	Governor.
Louisiana,	Acts of 1916, act No. 140,	Board of State Affairs.
Maine,	Laws of 1915, Ch. 299,	Governor and Council.
Maryland,	Constitution, Art. III, Sect. 52,	Governor.
Massachusetts,	General Acts of 1918, Ch. 244; Constitutional Amendment, 1918.	Governor.
Minnesota,	Session Laws of 1915, Ch. 356,	Governor.
Nebraska,	Laws of 1915, Ch. 229,	Governor.
New Jersey,	Acts of 1916, Ch. 15,	Governor.
New Mexico,	Laws of 1917, Chs. 81, 114,	Governor.
New York,	Laws of 1916, Ch. 130,	Committees on Finance and Ways and Means.
North Carolina,	Public Laws of 1917, Ch. 180,	Legislative Reference Librarian.
North Dakota,	Laws of 1915, Ch. 61,	Budget Board.
Ohio,	Legislative Acts of 1913, p. 658,	Governor.
Oregon,	General Laws of 1913, Ch. 284,	Secretary of State.
South Dakota,	Laws of 1916–1917, Ch. 354,	Budget Board.
Tennessee,	Public Laws of 1917, Ch. 139,	Budget Commission.
Utah,	Laws of 1917, Ch. 15,	Governor.
Vermont,	Acts and Resolves of 1915, No. 26,	Budget Committee.
Washington,	Session Laws of 1915, Ch. 126,	State Board of Finance.
West Virginia,	Constitution, Sect. 51,	Board of Public Works.
Wisconsin,	Session Laws of 1911, Ch. 583; Laws of 1913, Ch. 728; Laws of 1915, Ch. 606.	Board of Public Affairs.

Filing of Estimates. — In all of the States, the heads of departments, commissions, boards and institutions are required to file estimates of appropriations with the Governor or budget board or other officer. In Connecticut, Maryland, New Mexico, New Jersey and West Virginia not only department heads but also the Legislature and the judiciary must file requests.

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In New Jersey, North Dakota, Ohio, Vermont and Washington provision is made that all requests must be presented on uniform blanks furnished for that purpose. In New Jersey and Vermont the information which the estimates must contain is more or less definitely prescribed.

The State Auditor in Massachusetts, New Jersey, Ohio and Washington is required to provide the Governor or budget board with information as to anticipated revenues and other financial data, while in Tennessee this duty is laid upon the Comptroller.

Investigation and Revision of Estimates. — After the estimates have been received the Governor or budget board reviews them and submits a budget of annual appropriations and revenue together with recommendations as to the same. An exception to this rule is found in Oregon, where the Secretary of State merely *tabulates* the estimated expenditures and revenues *without recommendation*, and in North Carolina, where the Legislative Reference Librarian performs a similar function. In Nebraska, North Dakota and Vermont, whenever the amount recommended is different from that requested by the department or from the amount appropriated in previous years, reason for such differences must be set forth.

In the laws of Connecticut, Maryland, Massachusetts, New Jersey, New York, North Dakota, Ohio, Tennessee, Vermont and Washington, the budget-making authority is given special powers of investigation and examination in order to determine the reasonableness of the various requests. In Connecticut, North Dakota, Maryland and Vermont public hearings may be held at which heads of departments may appear to explain their requests. In Tennessee public hearings must be held.

Special Staff provided for. — The New York law provides for a special staff to assist the legislative committees in preparing the budget; while in New Jersey the Governor may appoint State officers together with not more than two assistants to form a special committee for the purpose of assisting him. In most of the other States provision is made that expert and clerical assistance may be obtained.

When and how the Budget must be submitted to the Legislature. — The usual provision is that the budget must be submitted at the opening of the legislative session. In the laws of Connecticut, Iowa, Kansas, Massachusetts, Minnesota, North Dakota, New Jersey, New York, South Dakota, Tennessee, Washington and West Virginia, the date on or before which the budget shall be submitted is definitely specified. In most cases this must be within two weeks from the commencement of the session; in Maryland, on the other hand, the budget does not have to be submitted until twenty days after the opening of the session, and in the case of a newly elected Governor the time may be extended to thirty days. In Utah the Governor must submit the budget not later than the twentieth day of the session, in New Mexico not later than the thirtieth day, and in Illinois not later than four weeks.

In New Jersey and Nebraska the budget is required to be submitted in the form of a special message from the Governor, thus giving it greater executive sanction. In New Jersey the provision is that the message "shall be in such form that it can be easily understood by the average citizen."

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Form and Content of Budget. — The budget in every case contains estimates of the proposed expenditures and anticipated revenues for the State during the ensuing year or for the biennial period in those States where the Legislature meets only once in two years. In Maryland, New Jersey, Nebraska and West Virginia the form and content of the budget are prescribed in considerable detail, the New Jersey law going so far as to include a set of rules and sample budget forms at the end of the statute.

Provisions for Consolidated Appropriation Bills. — The Maryland constitutional amendment and the New York and Utah laws require that the budget shall be accompanied by a bill providing for the proposed appropriations clearly itemized. In New Jersey, although there is no provision similar to that of Maryland, "no money shall be drawn from the treasury except by the general appropriation bill and it is the intent of this act that no supplemental, deficiency or incidental bill shall be considered," thus inferring that all appropriations are to be made in a consolidated measure. The Vermont law also provides that all appropriations shall be made in a single budget bill. Under the Connecticut law the Board of Finance and the Joint Committee on Appropriations may originate any bill they deem necessary. In Massachusetts all appropriations based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill. In New Mexico the Governor is charged with the preparation of all the appropriation bills both general and special which are necessary for carrying out the recommendations which he has made in his budget. In West Virginia the budget board is required to submit to the legislature two budgets, one for each of the ensuing fiscal years. In the other States there is no provision for a general budget bill.

Limitations upon Legislature and Legislative Procedure. — Maryland, New Mexico and West Virginia are the only States that attempt to limit the power of the legislative body by providing that the Legislature may only strike out or reduce items in the Governor's budget. The Legislature may, however, initiate appropriations after the Governor's recommendations have been disposed of, provided that every such appropriation is made in a separate bill. In Maryland every such bill must include a special tax levy to provide the needed revenue. The only other State which attempts anything of this kind is New York, where the appropriation bill after it has been advanced to third reading may not be amended without unanimous consent except to reduce or eliminate an item.

Supplementary Budgets. — The Maryland amendment and the laws of Massachusetts and New Jersey recognize that emergencies may arise after the budget has been submitted necessitating additional appropriations. Provision is therefore made that the Governor may transmit supplementary budgets for additional appropriations, for which action in Maryland he must receive the consent of the Legislature.

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APPENDIX B.

MARYLAND BUDGET AMENDMENT.

CONSTITUTION OF MARYLAND, ARTICLE III.

SECTION 52. The General Assembly shall not appropriate any money out of the Treasury except in accordance with the following provisions:

SUB-SECTION A. Every appropriation bill shall be either a Budget Bill, or a Supplementary Appropriation Bill, as hereinafter mentioned.

SUB-SECTION B. *First.* Within twenty days after the convening of the General Assembly (except in the case of a newly elected Governor, and then within thirty days after his inauguration), unless such time shall be extended by the General Assembly for the session at which the Budget is to be submitted, the Governor shall submit to the General Assembly two budgets, one for each of the ensuing fiscal years. Each budget shall contain a complete plan of proposed expenditures and estimated revenues for the particular fiscal year to which it relates; and shall show the estimated surplus or deficit of revenues at the end of such year. Accompanying each budget shall be a statement showing: (1) The revenues and expenditures for each of the two fiscal years next preceding; (2) the current assets, liabilities, reserves and surplus or deficit of the State; (3) the debts and funds of the State; (4) an estimate of the State's financial condition as of the beginning and end of each of the fiscal years covered by the two budgets above provided; (5) any explanation the Governor may desire to make as to the important features of any budget and any suggestion as to methods for the reduction or increase of the State's revenue.

Second. Each budget shall be divided into two parts, and the first part shall be designated "Governmental Appropriations" and shall embrace an itemized estimate of the appropriations; (1) for the General Assembly as certified to the Governor in the manner hereinafter provided; (2) for the Executive Department; (3) for the Judiciary Department, as provided by law, certified to the Governor by the Comptroller; (4) to pay and discharge the principal and interest of the debt of the State of Maryland in conformity with Section 34 of Article III of the Constitution, and all laws enacted in pursuance thereof; (5) for the salaries payable by the State under the Constitution and laws of the State; (6) for the establishment and maintenance throughout the state of a thorough and efficient system of public schools in conformity with Article VIII of the Constitution and with the laws of the State; (7) for such other purposes as are set forth in the Constitution of the State.

Third. The second part shall be designated "General Appropriations" and shall include all other estimates of appropriations.

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The Governor shall deliver to the presiding officer of each house the budgets and a bill for all the proposed appropriations of the budgets clearly itemized and classified; and the presiding officer of each house shall promptly cause said bill to be introduced therein, and such bill shall be known as the "Budget Bill." The Governor may, before final action thereon by the General Assembly amend or supplement either of said budgets to correct an oversight, or in case of an emergency, with the consent of the General Assembly, by delivering such an amendment or supplement to the presiding officers of both houses; and such amendment or supplement shall thereby become a part of said budget bill as an addition to the items of said bill or as a modification of or a substitute for any item of said bill such amendment or supplement may affect.

The General Assembly shall not amend the Budget bill so as to affect either the obligations of the State under Section 34 of Article III of the Constitution, or the provision made by the laws of the State for the establishment and maintenance of a system of public schools, or the payment of any salaries required to be paid by the State of Maryland by the Constitution thereof; and the General Assembly may amend the bill by increasing or diminishing the items therein relating to the General Assembly, and by increasing the items therein relating to the judiciary, but except as hereinbefore specified, may not alter the said bill except to strike out or reduce items therein, provided, however, that the salary or compensation of any public officer shall not be decreased during his term of office; and such bill when and as passed by both houses shall be a law immediately without further action by the Governor.

Fourth. The Governor and such representatives of the executive departments, boards, officers and commissions of the State expending or applying for State's money, as have been designated by the Governor for this purpose, shall have the right, and when requested by either house of the Legislature, it shall be their duty to appear and be heard with respect to any budget bill during the consideration thereof, and to answer inquiries relative thereto.

Sub-Section C. *Supplementary Appropriation Bills.* Neither house shall consider other appropriations until the Budget Bill has been finally acted upon by both houses, and no such other appropriation shall be valid except in accordance with the provisions following: (1) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called herein a Supplementary Appropriation Bill; (2) Each Supplementary Appropriation Bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in said bill; (3) No Supplementary Appropriation Bill shall become a law unless it be passed in each house by a majority of the whole number of the members elected; and the yeas and nays recorded on its final passage; (4) Each Supplementary Appropriation Bill shall be presented to the Governor of the State as provided in Section 17 of Article II of the Constitution and thereafter all the provisions of said Section shall apply.

Nothing in this amendment shall be construed as preventing the Legislature from passing at any time in accordance with the provisions of Section 28 of Article III of the Constitution and subject to the Governor's power of approval

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as provided in Section 17 of Article II of the Constitution an appropriation bill to provide for the payment of any obligation of the State of Maryland within the protection of Section 10 of Article I of the Constitution of the United States.

SUB-SECTION D. *General Provisions.* If the budget shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor may, and it shall be his duty to, issue a proclamation extending the session for such further period as may in his judgment be necessary for the passage of such Bill; but no other matter than such Bill shall be considered during such extended session except a provision for the cost thereof.

Second. The Governor for the purpose of making up his budget shall have the power, and it shall be his duty to require from the proper State officials, including herein all executive departments, all executive and administrative offices, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for State moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the legislative department, certified by the presiding officer of each house, of the judiciary, as provided by law, certified by the Comptroller, and for the public schools, as provided by law, shall be transmitted to the Governor, in such form and at such times as he shall direct, and shall be included in the budget without revision.

The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies, and of all institutions applying for State moneys. After such public hearings he may in his discretion revise all estimates except those for the legislative and judiciary departments, and for the public schools as provided by law.

Third. The Legislature may, from time to time, enact such laws, not inconsistent with this Section, as may be necessary and proper to carry out its provisions.

Fourth. In the event of any inconsistency between any of the provisions of this Section and any of the other provisions of the Constitution, the provisions of this Section shall prevail. But nothing herein shall in any manner affect the provisions of Section 34 of Article III of the Constitution or of any laws heretofore or hereafter passed in pursuance thereof, or be construed as preventing the Governor from calling extraordinary sessions of the Legislature, as provided by Section 16 of Article II, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

If any item of any appropriation bill passed under the provision of this Section shall be held invalid upon any ground, such invalidity shall not affect the legality of the Bill or of any other item on such Bill or Bills.

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APPENDIX C.

NEW YORK BUDGET STATUTE.

LAWS OF 1916, CHAPTER 130.

SECTION 31. *Annual Budget.* The finance committee of the senate and the ways and means committee of the assembly, acting jointly or separately, shall annually prepare and submit to the respective houses, not later than March fifteenth, a budget containing a complete and detailed statement of all appropriations to be made out of moneys of the general fund in the state treasury for the support and maintenance of the government of the state and for all other purposes, which appropriations or any part thereof shall become available during the period ending with the ensuing fiscal year. Such budget shall specify the department, board, bureau, commission, office or institution under whose supervision or control the moneys to be so appropriated are to be expended and the purposes for which such appropriations are made. There shall be attached to and made a part of such budget an itemized and detailed estimate of the probable revenues of the state out of which the appropriations specified in such budget may be paid, and such budget shall include an estimate of the amount which it will be necessary to raise by a direct tax for the payment of such appropriations. Such budget may be accompanied by a statement containing such information and data as the committees may deem advisable to present.

SECTION 32. *Appropriation bill; consideration by legislature.* The respective committees shall present with the budget a single bill providing the appropriations contained therein. The appropriation bill thus reported shall be referred to the committee of the whole of the senate and shall be advanced to the order of second reading in the assembly, and shall remain before the committee of the whole of the senate and on the order of second reading in the assembly for its consideration at least five full legislative days and on each of such days the bills shall be the special order of the day. While the bill is under consideration in the committee of the whole in the senate or on second reading in the assembly, the head of any department, office, board, bureau, commission or institution of the state, may, and when requested by a majority vote of either house, shall appear and shall be heard and answer inquiries by members pertinent to the appropriation bill then under consideration. All meetings of either house for the consideration of the appropriation bill shall be open to the public. While the bill is before the committee of the whole of the senate or on the order of second reading in the assembly, it may be amended either by inserting additional items or by increasing, reducing or eliminating items; but on third reading no amendments, except to reduce or eliminate an item in the bill, shall be in order except by unanimous consent. The bill when advanced to the order of third reading in

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either house shall be a special order of the day for at least three full legislative days.

SECTION 29. *Finance and ways and means committees continued during recess.* For the purpose of more effectively carrying out the provisions of this article, the committee on finance appointed under the rules of the senate and the committee on ways and means appointed under the rules of the assembly shall continue during the recess of the legislature, and the chairmen of the respective committees shall have power to name sub-committees to perform such duties as they may prescribe in gathering information as to the financial needs of the various charitable institutions, state hospitals, state prisons and other departments, boards, bureaus, commissions, offices and institutions of the state. The members of such sub-committees so serving shall be paid their necessary traveling expenses in the performance of their duties.

SECTION 27. *Appointment of clerks of finance and ways and means committees.* The chairman of the finance committee of the senate shall appoint the clerk of such committee. The chairman of the ways and means committee of the assembly shall appoint the clerk of such committee. Each appointment shall be evidenced by certificate duly executed by the officer making the appointment, and filed in the office of the secretary of state. Such clerks shall hold office until their successors are appointed.

SECTION 30. *Duties of clerks of finance and ways and means committees.* The clerk of the finance committee of the senate and the clerk of the ways and means committee of the assembly shall

1. Collect, compile and collate information and data relating to state departments, commissions, boards, bureaus, offices, institutions, public works and other subjects for which appropriations are made or sought.

2. Prepare and make available for the use of such committees tables showing appropriations made by the legislature from time to time and prepare and furnish when requested by such committees statistics and other information relating to such appropriations.

3. Procure, compile and make available for the use of such committees statistics as to the revenues of the state during the preceding year and the estimated revenues for the current and ensuing fiscal year.

4. File, preserve and maintain permanent records of information and data collected pursuant to this section, including correspondence in relation thereto.

5. Investigate and report on requests for appropriations and the needs therefor.

6. Aid either of such committees and the members thereof in making any investigation which may be required or authorized by either of such committees or by the legislature and, when requested to do so, aid any other legislative committee in making investigations pertaining to expenditure of state funds.

7. Aid the finance committee of the senate and the ways and means committee of the assembly, when requested, in the preparation of the annual budget and meet and confer with the said committees for the purpose of assisting in the preparation, amendment and revision of bills appropriating state moneys and otherwise aid such committees or either of them in the performance of their duties.

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8. For the purposes of this section, have access at all reasonable times to offices of state departments, commissions, boards, bureaus and offices, to institutions and to all public works of the state and they may, for the purpose of obtaining information as to the operations and the fiscal needs thereof, examine the books, papers and public records therein. Such state departments, commissions, boards, bureaus, offices and institutions shall through their proper officers or deputies furnish such data, information or statements as may be necessary for the proper exercise of their duties and for the purpose of carrying into effect the provisions of this article. The clerks of the finance and ways and means committees in exercising the powers and performing the duties prescribed by this section may act jointly, or separately, as they deem advisable. All data and other information or statements collected by such clerks shall be accessible at all times to the inspection of the governor, or to a person designated by him for such purpose.

BUDGET PROVISION OF PROPOSED NEW YORK CONSTITUTION, 1915.

Article V.

Section 1. On or before the fifteenth day of November . . . the head of each department of the state government except the legislature and judiciary, shall submit to the governor itemized estimates of appropriations to meet the financial needs of such department, including a statement in detail of all moneys for which any general or special appropriation is desired at the ensuing session of the legislature, classified according to relative importance and in such form and with such explanations as the governor may require.

The governor, after public hearing thereon, at which he may require the attendance of heads of departments and their subordinates, shall revise such estimates according to his judgment.

Itemized estimates of the financial needs of the legislature certified by the presiding officer of each house and of the judiciary certified by the comptroller shall be transmitted to the governor before the fifteenth day of January next succeeding for inclusion in the budget without revision but with such recommendation as he may think proper.

On or before the first day of February next succeeding he shall submit to the legislature a budget containing a complete plan of proposed expenditures and estimated revenues. It shall contain all the estimates so revised or certified and shall be accompanied by a bill or bills for all proposed appropriations and reappropriations, clearly itemized; it shall show the estimated revenues for the ensuing fiscal year and the estimated surplus or deficit of revenues at the end of the current fiscal year together with the measures of taxation, if any, which the governor may propose for the increase of the revenues. It shall be accompanied by a statement of the current assets, liabilities, reserves and surplus or deficit of the state; statements of the debts and funds of the state; an estimate of its financial condition as of the beginning and end of the ensuing fiscal year; and a statement of revenues and expenditures for the two fiscal years next preceding

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said year, in form suitable for comparison. The governor may, before final action by the legislature thereon, amend or supplement the budget.

A copy of the budget and of any amendments or additions thereto shall be forthwith transmitted by the governor to the comptroller.

The governor and the heads of such departments shall have the right, and it shall be their duty when requested by either house of the legislature, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearance and inquiries shall be provided by law. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein; but this provision shall not apply to items for the legislature or judiciary. Such a bill when passed by both houses shall be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary shall be subject to his approval as provided in section nine of article four.

Neither house shall consider further appropriations until the appropriation bills proposed by the governor shall have been finally acted on by both houses; nor shall such further appropriations be then made except by separate bills each for a single work or object, which bills shall be subject to the governor's approval as provided in section nine article four. Nothing herein contained shall be construed to prevent the governor from recommending that one or more of his proposed bills be passed in advance of the others to supply the immediate needs of the government.

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APPENDIX D.

NEW JERSEY BUDGET STATUTE.

ACTS OF 1916, CHAPTER 15.

SECT. 2. Each department of the State government, board, commission, charitable or correctional institution, or any other State agency, requiring an annual appropriation from the State, shall present a request therefor to the Governor on or before November fifteenth of each year. Any organization, body, committee or person intending to request an appropriation from the Legislature for any particular object or purpose or for any new annual expenditure, shall likewise present such request to the Governor on or before November fifteenth.

3. Such requests shall be made by the head of such department, president or chairman of such board or commission, or officer designated by the board of managers or other governing body of such charitable or correctional institutions, or other State agency. In the case of the judiciary, it shall be made by the Clerk of the Court of Errors and Appeals, under the direction of the Chancellor and the Chief Justice of the Supreme Court, and in the case of the Legislature, by the Clerk of the House of Assembly and Secretary of the Senate. In the case of any organization, body, committee or person as mentioned in paragraph two, the request shall be made by some person duly authorized therefor.

4. Such requests shall be made upon blank forms to be furnished by the Comptroller as approved by the Governor. The blank forms shall be filled in according to the rules attached hereto. The rules may be altered or amended, or new rules adopted by the Governor or the Joint Appropriation Committee of the Legislature from time to time as conditions may require.

5. All such requests for appropriation shall show in detail the purposes for which appropriations are requested, and where increases or decreases from previous appropriations are desired the reason therefor. Such requests shall be sworn to by the person making the same, which oath shall be in the form provided by rule.

6. There shall accompany such requests for appropriations a trial balance covering the preceding fiscal year, showing the receipts and expenditures of the department or body presenting such request in such form and detail as the Governor may direct.

7. On November fifteenth of each year, and thereafter as required, the Comptroller and State Treasurer shall jointly transmit to the Governor, in such form as he shall direct, a summary of the financial condition of the State. This report shall show, in condensed form, the financial condition of the State for the fiscal

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year ending October first preceding, the amounts expended and the amounts received, the sources and amounts of income, and the free balance in the treasury. He shall also furnish similar information, as nearly as the same can be ascertained, for the current year. The report shall likewise show the probable sources of revenue and the probable estimate of the State's income available for appropriations for the next fiscal year for which the Legislature will be requested to make appropriations.

8. Upon the receipt of requests for appropriations and the report of the Treasurer and Comptroller, the Governor shall proceed to examine such requests and reports for the purpose of determining the necessity of the appropriations so requested and shall in a separate message transmit to the Legislature on the second Tuesday in January a summary of such requests and reports, together with his recommendations thereon.

9. For the purpose of investigating the necessity of the appropriations so requested or for the purpose of ascertaining if either new sources of income are required or present sources of income are properly collected or for any similar purpose, at any time, the Governor may summon witnesses and conduct hearings or appoint any officer of the State government or any other person particularly fitted therefor to conduct an investigation or examination necessary to aid him in this purpose. Should the additional duties imposed upon the Governor by this act require further assistants, the Governor shall have power to appoint officers of the State government, together with not more than two special assistants, to form a permanent committee, acting with him in carrying out the provisions of this act.

10. The message of the Governor shall be in such form that it can be easily understood by the average citizen, and shall be printed and a copy thereof presented to each member of the Legislature, the press, each public library, and given such other publicity as the Governor or the Joint Appropriation Committee shall deem wise.

11. The Governor shall not recommend to the Legislature appropriations in excess of the anticipated revenue. Should he believe that additional appropriations are necessary, he shall, if he deems it advisable, suggest plans for raising sufficient revenue to meet such appropriations.

12. If he deems it necessary, the Governor may from time to time transmit special messages requesting additional appropriations for purposes not anticipated at the time the budget message was transmitted to the Legislature.

13. No money shall be drawn from the treasury except by the General Appropriation Bill, and it is the intent of this act that no supplemental, deficiency or incidental bill shall be considered.

14. Whenever any act creating or regulating any body, mentioned in paragraph two, shall limit the amount which such body may expend, such act shall be deemed to be repealed in so far as such limit is concerned if a greater amount is appropriated by any succeeding Legislature to the extent only of such greater amount.

15. In order that some degree of flexibility in appropriations may be had, any department or other agency receiving an appropriation by any future act of the

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Legislature may apply to the State House Commission for leave to transfer a part of any item granted to such department or agency to any other item in such appropriation. Such application shall only be made during the current year for which the appropriation was made, and if the State House Commission shall consent thereto it shall notify the Comptroller thereof in writing, whereupon the Comptroller shall place the amount so transferred to the credit of the item so designated; *provided, however*, that no sum appropriated for any permanent improvement shall be used for maintenance or for any temporary purpose.

16. Any department of the State government, board, commission, charitable or correctional institution, or any other State agency which derives its income in part or in whole from fees, licenses, taxes, penalties, or in any manner, by reason of any law whereby such income is paid directly to such body for its support and not by appropriation from the State treasury, shall, upon request of the Governor, supply information concerning such income and the expenditure thereof either in the form required for appropriations or in any other form which he may direct, and the Governor shall have the same powers of investigation over such bodies as over other bodies requesting appropriations under this act.

17. The expense of conducting any investigation authorized in this act may be drawn from either a special appropriation made for this purpose or from the Governor's emergency fund. Such expenses shall be paid upon the certificate of the Governor.

18. This act shall be liberally construed, and if any section thereof shall be declared unconstitutional by any court of competent jurisdiction, it shall not affect any other section thereof.

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APPENDIX E.

MASSACHUSETTS BUDGET STATUTE.

GENERAL ACTS OF 1918, CHAPTER 244.

An Act to establish a Budget System for the Commonwealth.

Be it enacted, etc., as follows:

SECTION 1. Every officer or board having charge of any department, institution or undertaking which receives an annual appropriation of money from the treasury of the commonwealth, including annual appropriations to be met by assessments, shall annually, on or before the fifteenth day of October, submit to the supervisor of administration statements showing in detail the amounts appropriated for the current fiscal year, and estimates of the amounts required for ordinary maintenance for the ensuing fiscal year, with an explanation of any increased appropriations recommended, and with citations of the statutes relating thereto, together with such other information, from time to time, as may be required by the supervisor of administration. The said estimates shall not include any estimate for any new or special purposes or objects not authorized by statute. The officer or board submitting the estimates shall file on the same date duplicate copies thereof with the auditor of the commonwealth.

SECTION 2. Officers, heads of departments, boards, commissions and trustees of institutions who, in their annual reports or otherwise, recommend or petition for the expenditure of money from the treasury of the commonwealth from any source of revenue, including expenditures to be met by assessments or the issue of notes or bonds, for any purpose or object not covered by the estimates required to be submitted under the provisions of section one of this act shall, on or before October fifteenth of each year, submit estimates thereof in detail to the supervisor of administration, together with such other information as he may require from time to time.

SECTION 3. The auditor of the commonwealth shall annually, on or before the twenty-sixth day of December, prepare and file with the clerk of the house of representatives and with the supervisor of administration statements of state accounts setting forth in comparative tabulations the estimates filed under the provisions of section one of this act and estimates of all claims and other expenditures authorized by the statutes, including interest, sinking fund and serial bond requirements, the appropriations for the preceding year and expenditures for all state purposes for the preceding three years. The auditor shall further prepare and file with the said clerk and supervisor, on or before the said twenty-sixth day of December, his estimates for the ordinary and other revenue of the commonwealth in comparative tabulations with the actual revenue for the

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preceding three years, together with a statement of the free or unencumbered cash balance and other resources available for appropriation.

SECTION 4. The supervisor of administration shall study and review all estimates and requests for appropriations and other authorizations for expenditures of state funds filed with him as provided in this act, and shall make such investigations as may be necessary to enable him to prepare a budget for the governor, setting forth such recommendations as the governor shall determine upon. The governor may call upon the department of the auditor for information relative to the finances of the commonwealth and for assistance in the preparation of the budget. For this purpose the auditor may appoint a deputy in his department at an annual salary not to exceed thirty-five hundred dollars. The budget shall be submitted by the governor to the general court not later than the second Wednesday in January of each year, and it shall embody all estimates, requests and recommendations for appropriations or other authorizations for expenditures from the treasury of the commonwealth. The budget shall be classified and designated so as to show separately estimates and recommendations for: (*a*) expenses of administration, operation and maintenance; (*b*) deficiencies or overdrafts in appropriations of former years; (*c*) new construction, additions, improvements and other capital outlay; (*d*) interest on the public debt and sinking fund and serial bond requirements; and (*e*) all requests and proposals for expenditures for new projects and other undertakings; and shall include in detail definite recommendations of the governor relative to the amounts which should be appropriated therefor. The budget shall also include definite recommendations of the governor as to the financing of the expenditures recommended and the relative amounts to be raised from ordinary revenue, direct taxes or loans. All appropriations based upon the budget to be paid from taxes or revenue shall be incorporated in a single bill to be designated the general appropriation bill. With the budget the governor shall submit to the general court such messages, statements or supplemental data with reference to the budget as he may deem expedient, and from time to time during the session of the general court he may submit supplemental messages on recommendations relative to appropriations, revenues and loans.

SECTION 5. Sections three and four of chapter seven hundred and nineteen of the acts of nineteen hundred and twelve, as amended by chapter two hundred and seventy-eight of the General Acts of nineteen hundred and seventeen, and all other acts and parts of acts inconsistent herewith, are hereby repealed.

SECTION 6. This act shall take effect on the first day of July in the year nineteen hundred and eighteen. [*Approved May 28, 1918.*

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APPENDIX F.

MASSACHUSETTS BUDGET AMENDMENT.

ADOPTED NOVEMBER 5, 1918.

SECTION 1. *Collection of Revenue.* — All money received on account of the Commonwealth from any source whatsoever shall be paid into the treasury thereof.

SECTION 2. *The Budget.* — Within three weeks after the convening of the General Court the Governor shall recommend to the General Court a budget which shall contain a statement of all proposed expenditures of the Commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the General Court may by law prescribe, or, in default thereof, as the Governor shall determine. For the purpose of preparing his budget, the Governor shall have power to require any board, commission, officer or department to furnish him with any information which he may deem necessary.

SECTION 3. *The General Appropriation Bill.* — All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The General Court may increase, decrease, add or omit items in the budget. The General Court may provide for its salaries, mileage, and expenses and for necessary expenditures in anticipation of appropriations, but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the Governor. The Governor may at any time recommend to the General Court supplementary budgets which shall be subject to the same procedure as the original budget.

SECTION 4. *Special Appropriation Bills.* — After final action on the general appropriation bill or on recommendation of the Governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained.

SECTION 5. *Submission to the Governor.* — The Governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within five days after the bill shall have been presented to him, such items shall have the force of law unless the General Court by adjournment shall prevent such transmission, in which case they shall not be law.

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APPENDIX G.

CALIFORNIA BUDGET AMENDMENT.

STATUTES OF CALIFORNIA, SESSION OF 1917, 1937.

SUBMITTED TO THE PEOPLE NOVEMBER 5, 1918 AND REJECTED.

SEC. 34. The needs of the state offices, departments and institutions, for each biennial period shall be ascertained and appropriations therefor recommended by a state budget board, consisting of the three members of the state board of control and the state controller, and the lieutenant governor as ex-officio member, which board shall report its recommendations to the legislature not later than the twentieth day of each regular session. The budget so reported shall be introduced in the form of two bills, one the general appropriation bill, the other an omnibus appropriation bill carrying special items for improvements and betterments. The chairman, or designated member of the budget board, shall sit with each house of the legislature, in committee of the whole thereof, when these two bills are under consideration and may participate in the debate thereon. No bill making an appropriation of money, except these two bills, shall contain more than one item of appropriation, and that for one single and certain purpose, to be therein expressed.

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APPENDIX H.

WEST VIRGINIA BUDGET AMENDMENT.

ACTS OF THE LEGISLATURE OF WEST VIRGINIA, SECOND EXTRAORDINARY SESSION, MAY, 1917, CHAPTER 15.

ADOPTED BY THE PEOPLE NOVEMBER 5, 1918.

SECTION 51. The legislature shall not appropriate any money out of the treasury except in accordance with the following provisions:

Sub-Section A.

Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter mentioned.

Sub-Section B.

First: Within ten days after the convening of the legislature, unless such time shall be extended by the legislature for the session at which the budget is to be submitted, the board of public works, which shall consist of the governor, secretary of state, auditor, treasurer, attorney general, superintendent of free schools and commissioner of agriculture, shall submit to the legislature two budgets, one for each of the ensuing fiscal years. Each budget shall contain a complete plan of proposed expenditures and estimated revenues for the particular fiscal year to which it relates; and shall show the estimated surplus or deficit of revenues at the end of such year. Accompanying each budget shall be a statement showing: (1) the revenues and expenditures for each of the two fiscal years next preceding; (2) the current assets, liabilities, reserves and surplus or deficit of the state; (3) the debts and funds of the state; (4) an estimate of the state's financial condition as of the beginning and end of each of the fiscal years covered by the two budgets above provided; (5) any explanation the board of public works may desire to make as to the important features of any budget and any suggestions as to methods for the reduction or increase of the state's revenue.

Second: Each budget shall be divided into two parts, and the first part shall be designated "Governmental Appropriations" and shall embrace an itemized estimate of the appropriations; (1) for the legislature as certified to the board of public works in the manner hereinafter provided; (2) for the executive department; (3) for the judiciary department, as provided by law, certified to the governor by the auditor; (4) to pay and discharge the principal and interest of any debt of the state of West Virginia hereafter created in conformity with the constitution, and all laws enacted in pursuance thereof; (5) for the salaries payable by the state under the constitution and laws of the state; (6) for the aid of

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public schools in conformity with the laws of the state; (7) for such other purposes as are set forth in the constitution and laws made in pursuance thereof.

Third: The second part shall be designated "General Appropriations," and shall include all other estimates of appropriations.

The board of public works shall deliver to the presiding officer of each house the budgets and a bill for all the proposed appropriations of the budgets clearly itemized and classified; and the presiding officer of each house shall promptly cause said bill to be introduced therein, and such bill shall be known as the "Budget Bill." The board of public works may, before final action thereon by the legislature, amend or supplement either of said budgets to correct an oversight or in case of an emergency, with the consent of the legislature, by delivering such an amendment or supplement to the presiding officers of both houses; and such amendment or supplement shall thereby become a part of said budget bill as an addition to the items of said bill or as a modification of or a substitute for any item of said bill such amendment or supplement may affect.

The legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or diminishing the items therein relating to the legislature, and by increasing the items therein relating to the judiciary, but except as hereinbefore specified, may not alter the said bill except to strike out or reduce items therein; *provided, however*, that the salary or compensation of any public officer shall not be increased or diminished during his term of office; and such bill when and as passed by both houses shall be a law immediately without further action by the governor.

Fourth: The governor and such representatives of the boards, officers, and commissions of the state expending or applying for state's money as have been designated by the board of public works for this purpose, shall have the right, and when requested by either house of the legislature it shall be their duty to appear and be heard with respect to any budget bill during the consideration thereof, and to answer inquiries relative thereto.

Sub-Section C. — Supplementary Appropriation Bills.

Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except in accordance with the provisions following:

(1) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called herein a supplementary appropriation bill; (2) Each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in said bill unless it appears from such budget that there is sufficient revenue available; (3) No supplementary appropriation bill shall become a law unless it be passed in each house by a vote of a majority of the members present, and the yeas and nays recorded on its final passage. Each supplementary appropriation bill shall be presented to the governor of the state as provided in section fourteen of article seven of the constitution and thereafter all the provisions of said section shall apply.

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Nothing in this amendment shall be construed as preventing the legislature from passing in time of war an appropriation bill to provide for the payment of any obligation of the state of West Virginia within the protection of section ten of article one of the constitution of the United States.

Sub-Section D. — General Provisions.

First: If the "Budget Bill" shall not have been finally acted upon by the legislature three days before the expiration of its regular session, the governor may, and it shall be his duty to issue a proclamation extending the session for such further period as may, in his judgment, be necessary for the passage of such bill; but no other matter than such bill shall be considered during such extended session except a provision for the cost thereof.

Second: The board of public works for the purpose of making up its budgets shall have the power, and it shall be its duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions, and agencies expending or supervising the expenditures of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as said board shall direct. The estimates for the legislative department, certified by the presiding officer of each house, of the judiciary, as provided by law, certified by the auditor, and for the public schools, as provided by law, shall be transmitted to the board of public works, in such form and at such time as it shall direct, and shall be included in the budget.

The board of public works may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies, and all institutions applying for state moneys. After such public hearings it may, in its discretion, revise all estimates except those for the legislative and judiciary departments, and for the public schools as provided by law.

Third: The legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

Fourth: In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the constitution, except amendments thereto heretofore made and ratified by the people, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the governor from calling extraordinary sessions of the legislature, as provided by section seven of article seven, or as preventing the legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

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BULLETIN No. 3

THE ABOLITION OF THE GOVERNOR'S COUNCIL

WITH A SUPPLEMENT ON THE

STATUTORY POWERS AND DUTIES OF THE GOVERNOR AND COUNCIL.

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THE ABOLITION OF THE GOVERNOR'S COUNCIL.

I. Origin and Development of the Governor's Council in Massachusetts.

The settlers of Plymouth Colony, who came in 1620 under a patent from the South Virginia Company, discovering that they had reached a region outside of the jurisdiction of that Company, instituted a government of their own, choosing a Governor and a board of "assistants" of seven. These assistants formed the historical origin of the present Council in this Commonwealth. The people continued under this form of government until 1628, when Charles I granted them a charter, under which the freemen could elect eighteen assistants; and this body, together with the Governor and the Deputy Governor, formed the upper branch of the Assembly or General Court.

During the administration of Sir Henry Vane as Governor of Plymouth Colony, about 1644, there was established a standing Council and a Board of two Assistants. And at about the same time, the two bodies of the General Court, viz., the Council and Assistants on the one hand, and the Representatives on the other, began to hold separate sessions. Out of this organization came later the establishment of the two concurrent branches of the Legislature, the Senate being substituted for the Board of Assistants.

In 1684 the charter granted by Charles I was revoked; and in 1686 Sir Edmund Andros was appointed by Charles II to be military Governor of all New England. A Council was established, but it was a mere instrument of royalty and despotism controlling the legislature and the people, and, together with the royal Governor, ruling with an iron hand. In 1689 the people of Boston revolted against such tyranny, and revived the government as it had existed under the charter of Charles I. Attempts to renew that charter were unsuccessful, but in 1691 the charter of William and Mary was issued, providing a more acceptable form of government. This charter provided for the appointment of a Governor, a Secretary and a Treasurer by the Crown, and the election of the Assistants or

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Councillors, as they were then for the first time called, by the General Court. These Councillors numbered twenty-eight, and were apportioned as follows: twenty-one from Massachusetts, four from Plymouth Colony and three from Maine. They, together with the Governor and Deputy Governor, formed the upper branch of the General Court and participated in all the legislative and in a portion of the judicial action of the government. That arrangement continued until the Revolution, when the separation of legislative, judicial and executive functions was made and the Council was retained as part of the executive branch.

In 1778 the General Court, by a resolution of its own, met as a Convention and drafted a constitution which made no provision for a Council; the Governor was authorized to advise with the Senate, and the pardoning power was given to the Governor, Deputy Governor and the Speaker of the House. This Constitution was rejected by the people. Under a second resolution, passed by the General Court, the people chose their own delegates to represent them in Convention; and that Convention formulated and perfected the Constitution which we have today, except as since amended. The Convention of 1820, which next met to revise the Constitution, still retained the Council. It consisted of nine members who were elected by joint ballot of the Senators and Representatives from among the persons returned for Councillors and Senators; and in case there was not found upon the first choice the whole number of nine persons to accept a seat in the Council, the deficiency was made up by electors aforesaid from among the people at large. On April 6, 1840, the people ratified the Thirteenth Article of Amendment to the Constitution, which provided that the nine councillors should annually be chosen from among the people at large by joint ballot of the Senators and Representatives, who were also given power to fill up any vacancies that might occur in the Council; that no person should be elected a Councillor who had not been an inhabitant of the Commonwealth for the term of five years immediately preceding his election; and that not more than one Councillor should be chosen from any one senatorial district.

In the Convention of 1853, the committee designated to report on the advisability of abolishing or retaining the Council reported in favor of its abolition, there being only one dissent from the report.[1]

[1] *Debates in the Massachusetts Convention, 1853*, I, 338, 339.

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The recommendation of the committee was rejected by the Convention, — and the proposals of the Convention were rejected by the people. From the debates of the Convention, there seems to have been a general expectation that one of the changes in the Constitution would be the abolition of the Council.[1] Although this was not done, an amendment was adopted in 1855 whereby an important change was made with respect to the manner of choosing the members of the Council. Instead of being elected by the Legislature, it was provided that the State should be divided into eight districts, each of which should elect one Councillor.

II. History of the Council in Other States.

In addition to Massachusetts, there are now only two States (Maine[2] and New Hampshire[3]) the constitutions of which provide for an Executive Council. North Carolina has something similar under a clause of her Constitution which provides that the "Secretary of State, Auditor, Treasurer, Superintendent of Public Works and Superintendent of Public Instruction shall constitute ex officio the Council of State, who shall advise the Governor in the execution of his office." The only occasion on which the Constitution of North Carolina provides specifically for the Council of State to advise the Governor is in convening the Legislature on extraordinary occasions.

The charters of Delaware and Rhode Island provided for an election of "assistants" by the freemen. In Delaware the Constitution of 1776 provided for the election of a privy council by the Legislature; but the Constitution of 1792 abolished that branch of the executive. In Rhode Island the Executive Council was abolished by the Constitution of 1842.

Maryland abolished the Executive Council in 1837 and gave to the Senate the ratification of appointments by the Governor. The Constitution of 1867 gave him the sole power to grant reprieves and pardons, except in case of impeachment.

Pennsylvania abolished in 1790 the Council provided for by the

[1] *Debates in the Massachusetts Convention, 1853*, I, 468 (Adams); 478 (Wilson); 482 (Butler); 528 (Morton).

[2] Maine became independent of Massachusetts in 1820, and took over its form of government almost in toto, and has amended it very little since.

[3] In the New Hampshire Constitutional Convention of 1912, the committee designated to report on the expediency of abolishing the Council reported in favor of retaining it, and the Convention adopted the recommendation of the committee without debate.

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Constitution of 1776. The power of pardoning was vested in the Governor, and subsequently a Board of Pardons was established.

South Carolina abolished the Executive Council in 1790. The power of pardoning has since been given to the Governor, and a Board of Pardons has been established which is advisory only.

Vermont, by an amendment in 1836, abolished the Executive Council and gave all executive power to the Governor, and the ratification of appointments to the Senate.

Virginia abolished the Executive Council in the Constitution of 1850.

No State that originally had no council has ever adopted it as a branch of the executive department. The change has all been in the direction of abolition.

III. The Debate in the Constitutional Convention of 1853 on the Expediency of abolishing the Council.

A. Summary of Arguments favoring Abolition.

1. The Council is a relic of the old Board of Assistants, which was the colonial Privy Council, — a body of advisers surrounding the Crown who could be held responsible by the people. Out of place in a form of government where the Governor is responsible to the people.

2. It does not, by reason of the duties it performs, dispense with any executive, administrative or legislative officers or bodies.

3. It leads to loose legislation. "In consequence of the historical character of the Council, legislators are now in the habit of making the laws in reference to it, and when they have elaborated those laws down to certain lines of detail, where specific provisions become difficult or intricate, to be rid of the labor, they put in a sweeping clause, 'to be done under the direction of the Governor and Council;' instead of directing by law how things shall be done, things are left to be done under the direction of the Governor and Council, that ought to be done by direction of law. And therein, your Governor and Council practically do participate in the legislative power, although they do it according to law." [1]

4. It has a prejudicial effect on the judiciary in that the power of revision of sentences, as exercised by it, weakens the court, and the strength and power of punishment.

[1] *Debates in the Massachusetts Convention, 1853*, I, 510, 511.

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5. The Governor does not rely on it for information, but goes directly to the heads of departments.

6. It destroys the unity of the executive and concentration of responsibility, and thus militates against efficient administration.

(*a*) The practice of other States shows it is safe to concentrate executive power and responsibility in the Governor.

7. Economy in the operation of the government would be effected by a saving of salaries and expenses.[1]

8. The secret proceedings of the Council, particularly in the matter of pardons, is objectionable.

9. The constitutional duties which it performs can be as efficiently performed by other officers or bodies already existing, as shown by practice in those States that have abolished the Council or that have never had one.

10. As to the pardoning power, while the Governor may not grant a pardon without the advice of the Council, he may refuse to grant one which the Council has recommended.[2]

(*a*) The concentration of responsibility for pardons in the Governor, or in a Board of Pardons of which he is a member, is preferable to division of it between the Governor and the Council.

(*b*) There is duplication of work and consideration in cases where the Governor has doubt as to propriety of following the advice of the Council and must therefore hear proceedings again.

(*c*) The number of cases of application for pardon not so great that the Governor cannot attend to them personally or with the help of a Board of Pardons, as is done in nearly all the States.

11. With respect to the confirmation of appointments or removals by the Governor:

(*a*) It is safer, more conservative and more in accord with the successful practice of the Federal and nearly all the State governments to give the power of ratification to the Senate, which more completely represents all the people.

(*b*) If the Governor and the Council disagree, action is blocked.

(*c*) If the Governor and the Council are of one political party, appointments may be a mere distribution of spoils.

12. With respect to succession:

(*a*) The practice in other States, whereby the President *pro tempore* of the Senate, the Speaker of the House, the Secretary of

[1] The average annual cost of Council for the ten years from 1906 to 1915, inclusive, has been $10,291.66.

[2] Opinion of Justices to the Governor, 190 Mass. 616; 210 Mass. 609, and cases there cited.

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State and other administrative officers follow the Lieutenant Governor in order of succession, in event of a vacancy in the office of Governor, works well and retains concentration of responsibility.

(*b*) The Council does not succeed the Governor and Lieutenant Governor in Maine and New Hampshire, — the only States besides Massachusetts in which the Governor's Council is still retained.

13. With respect to the examination of the returns of votes for Senators, that is a mere clerical duty which is in fact performed by the town officers.

14. With respect to approving the Governor's warrants for payments from the Treasury:

(*a*) Nearly all his warrants are drawn in obedience to express statute or positive resolve of the Legislature.

(*b*) The Auditor or Attorney General, or both, can pass on the validity of every claim against the Commonwealth.

(*c*) No other State has such a provision.

15. With respect to adjourning and proroguing the Legislature:

(*a*) Merest administrative act for which few States make any provision.

(*b*) Nearly all the States entrust Governor with the power of adjourning the Legislature when the two houses cannot agree.

16. With respect to calling special sessions of the Legislature when the public welfare requires:

(*a*) The Governor more likely to know when the occasion arises.

(*b*) The Council is advisory only.

(*c*) To require the assent of the Council to the calling of a special session by the Governor on extraordinary occasion would endanger the public welfare, in the event of disagreement between the Governor and Council.

(*d*) Nearly all the States give this power to the Governor.

B. Summary of Arguments against the Abolition of the Council.

1. It is not safe to concentrate executive power in one individual.

2. The duties of the Governor and other officers or bodies would be onerously increased.

3. The Governor needs check, or support, according to circumstances.

4. The Council is more accessible than the Governor to convicts seeking pardons.

5. The Council more than earns its salary by the work it does.

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IV. On the Distribution of the Duties of the Council in the Event of its Abolition.

A. Constitutional Duties now performed by the Council.

1. To examine, with the Governor, the records of votes for Senators. (Ch. I, Sect. II, Art. III.)

2. To assemble, upon the call of the Governor, and advise him in the executive part of the government, agreeably to the Constitution and the laws of the land. (Ch. II, Sect. I, Art. IV; Ch. II, Sect. III, Art. I.)

3. To advise the Governor in adjourning or proroguing the Legislature to any time the two houses shall desire, and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth requires it. (Ch. II, Sect. I, Art. V.)

4. To advise the Governor in adjourning or proroguing the Legislature in cases of disagreement between the two houses as to necessity, expediency or time. (Ch. II, Sect. I, Art. II.)

5. To advise the Governor in pardoning offences. (Ch. II, Sect. I, Art. VIII.)

6. To advise and consent to the appointment, by the Governor, of all judicial officers, the solicitor-general, coroners and notaries public. (Ch. II, Sect. I, Art. IX.)

7. To advise the Governor in filling vacancies in the offices of brigadiers, field officers, captains or subalterns in the militia, if the electors shall neglect or refuse to make such elections after being duly notified. (Ch. II, Sect. I, Art. X.)

8. To advise the Governor in the appointment of officers of the Continental Army. (Ch. II, Sect. I, Art. X.)

9. To advise and consent to all money warrants drawn by the Governor on the treasury. (Ch. II, Sect. I, Art. XI.)

10. To execute all executive powers, in case the offices of Governor and Lieutenant Governor shall be vacant for any reason. (Ch. II, Sect. III, Art. VI.)

11. To consent to the removal of judicial officers by the Governor upon address of both houses of the Legislature (Ch. III, Art. I), and to consent to the removal of justices of the peace and notaries public. (Amendments, Arts. IV and XXXVII.)

12. To hear and determine, with the Governor, all causes of mar-

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riage, divorce and alimony, and all appeals from the judges of probate, until the Legislature shall by law make other provision (which has been done). (Ch. III, Art. V.)

13. To attend the Governor in the administration of the oath of office to the Senators and Representatives. (Ch. VI, Art. I.)

14. To advise and consent to appointments by the Governor to fill vacancies in the offices of Secretary, Treasurer, Auditor or Attorney-General when the Legislature is not in session. (Amendment, Art. XVII.)

15. To advise and consent to appointments by the Governor to fill a vacancy in the Council when the Legislature is not in session. (Amendment, Art. XXV.)

B. By whom performed in Other States.

1. EXAMINATION OF RETURNS AND RECORDS OF VOTES FOR SENATORS. — The only other States that have provisions for the examination of returns of votes for Senators are Connecticut, where the Treasurer, Secretary and Comptroller canvass the votes publicly, and Maine, where the provision is practically the same as in this State.

2. ADJOURNING AND PROROGUING THE LEGISLATURE ON AGREEMENT OF BOTH HOUSES. — This is simply a formal act for which the constitutions of other States make no provision.

3. ADJOURNING AND PROROGUING THE LEGISLATURE IN CASE OF DISAGREEMENT BETWEEN THE TWO HOUSES AS TO NECESSITY, EXPEDIENCY OR TIME. — All the constitutions that have provisions of this nature give the power to the Governor alone.

Seventeen States limit adjournment to the day of the next regular session. [1] Several add the requirement that the facts shall be certified to the Governor by the presiding officers of both houses; [2] or by the house first moving adjournment; [3] or by the presiding officer thereof; [4] or by the house last moving adjournment; [5] or by either house.[6]

Four States limit the period of adjournment specifically.[7]

[1] Arkansas, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kansas, Maine, Mississippi, Nebraska, Nevada, Ohio, Oklahoma, Rhode Island, South Carolina, Utah.
[2] Arkansas.
[3] Nebraska.
[4] Illinois, Oklahoma.
[5] Colorado.
[6] Rhode Island.
[7] Delaware, 3 months; Kentucky and Pennsylvania, 4 months; New Hampshire, 90 days.

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In Georgia, the Governor may adjourn either house.

In Vermont, he may adjourn the Legislature to such time as he sees fit.

4. Calling of Special Sessions. — Except in New Hampshire,[1] North Carolina,[2] and Virginia,[3] the Governor alone, on "extraordinary occasions" or when the public welfare requires it, has power to call special sessions of the Legislature.[4]

Twenty-one States require the call to be by proclamation.[5] And fifteen States require it to state the purpose of meeting.[6]

West Virginia has the additional provision that the Governor must call a special session on the application in writing of three-fifths of the members of each house.

Delaware and Pennsylvania have additional provisions that the Governor may convene the Senate only, by proclamation, for the transaction of executive business.

5. Pardoning Power. — In most of the State constitutions, the pardoning power is divided into commutation of sentences; pardons; remission of fines, penalties and forfeiture; and granting of reprieves. The Constitution of Massachusetts provides merely for the pardoning of offences; but this has been held to include the exercise of power to grant the other forms of executive clemency.[7]

In more than half of the States the power to commute sentences, to pardon, except in cases of treason or impeachment or both, and to remit fines and forfeitures, is given to the Governor alone. And in as many as forty States he has exclusive power to grant reprieves. In most instances his power to exercise clemency is subject to regulations prescribed by law or to the provisions of the law relative to the manner of applying therefor.

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[1] In New Hampshire, the Legislature may assemble at such time as it may deem necessary.

[2] In North Carolina, call is with advice of council of state.

[3] In Virginia, call is on application of two-thirds of members of both houses.

[4] Alabama (not to exceed 30 days), Arizona, Arkansas, California, Connecticut, Colorado, Delaware, Florida (not to exceed 20 days), Georgia (not to exceed 30 days), Illinois, Idaho (not to exceed 20 days), Indiana (not to exceed 40 days), Iowa, Kansas, Kentucky, Louisiana (not to exceed 30 days), Maine, Maryland (not to exceed 30 days), Michigan, Minnesota, Mississippi (not to exceed 30 days, unless Governor, deeming public interest to require it, shall extend sitting by proclamation in writing for specific number of days), Missouri, Montana, Nebraska, Nevada (not to exceed 20 days), North Carolina, North Dakota, New Jersey, New York, New Mexico (not to exceed 30 days), Ohio, Oregon (not to exceed 20 days), Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas (not to exceed 30 days), Utah (not to exceed 30 days), Virginia, Vermont, West Virginia, Wisconsin, Wyoming.

[5] Alabama, Arizona, Arkansas, California, Delaware, Florida, Iowa, Illinois, Indiana, Kentucky, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Washington.

[6] Alabama, Arizona, Arkansas, California, Florida, Illinois, Kentucky, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Tennessee, Texas, Washington.

[7] Opinion of the Justices to the Governor, 210 Mass. 608, and cases there cited.

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In seven States the Governor has power to commute, in nine States he has power to pardon, in six States he has power to remit fines and forfeitures, and in three States he has power to grant reprieves on recommendation of the Board of Pardons, in conjunction with it, or with the approval of the Board of Pardons or the Council.

Of the Constitutions that provide for Boards of Pardons, four give to the Board exclusive power to commute sentences, five give it exclusive power to pardon, and five give it exclusive power to remit fines and forfeitures. In none of these States, however, has the Board of Pardons power to grant reprieves.

Connecticut seems to be the only State in which the power to pardon is given to the Legislature.

In most States the Constitution requires that the Governor, or the Board of Pardons, where it has exclusive power and the Governor is not a member of it, shall report to the Legislature, either at each session thereof, biennially or annually, each case of commutation, pardon, remission or reprieve, and certain specific information concerning it.

For a more detailed treatment of this topic see Bulletin No. 4, *The Pardoning Power*.

6. Confirmation of Appointments. — The power of confirming appointments, wherever it is required, is given to the Senate, except in Virginia, where the consent of the Legislature is required only to appointments to the State Corporation Commission, and in Maine and New Hampshire, where the power of confirmation is given to the Council.

7. Advising the Governor in filling Vacancies in the Militia. — In all the States the Governor has sole power to fill vacancies in the elective offices in the militia, without confirmation, where the electors have refused or neglected to fill the same.

8. Advising the Governor in Appointment of Officers of the Continental Army. — No other States have such a provision.

9. Consent to Money Warrants drawn by the Governor on the Treasury. — The only other States having a constitutional provision of this nature are Vermont, where the Governor is authorized to draw on the Treasurer for such sums as the Legislature may appropriate, and Missouri, where the Governor is authorized to approve of depositary banks and their security for deposits of State funds.

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10. Succession. — The order of succession to the office of Governor in case of a vacancy therein is as follows: —

(*a*) Lieutenant-Governor; President *pro tempore* of the Senate.[1]
(*b*) Lieutenant-Governor; President *pro tempore* of the Senate; Speaker of the House [2] (this is the most common arrangement).
(*c*) Lieutenant-Governor; President *pro tempore* of Senate; Secretary of State.[3]
(*d*) Lieutenant-Governor; President *pro tempore* of Senate; Secretary of State; Attorney-General.[4]
(*e*) Lieutenant-Governor; President *pro tempore* of the Senate; Speaker of the House; Attorney-General; Auditor; Secretary of State; Treasurer.[5]
(*f*) Lieutenant-Governor; Secretary of State.[6]
(*g*) Lieutenant-Governor; Secretary of State; President *pro tempore* of the Senate.[7]
(*h*) Lieutenant-Governor; Secretary of State; Attorney-General; President *pro tempore* of Senate; Speaker of the House.[8]
(*i*) Lieutenant-Governor; Secretary of State; Treasurer; Auditor; Attorney-General; Superintendent of Public Instruction; Commissioner of Public Lands.[9]
(*j*) Lieutenant-Governor; Legislature to provide.[10]
(*k*) President of the Senate; Speaker of the House.[11]
(*l*) President of Senate; Speaker of the House; joint vote of Legislature to elect.[12]
(*m*) Legislature to elect successor; during recess, President of Senate; during recess, Speaker of House; Legislature to provide by law.[13]
(*n*) Secretary of State.[14]
(*o*) Secretary of State; President of the Senate.[15]

11. Consent to Removal of Judicial Officers, Justices of the Peace and Notaries Public. (*a*) *Judicial Officers.* — Only three States have constitutional provision for action by the Governor in the removal of judicial officers: —

[1] Connecticut, Nevada, North Carolina, Pennsylvania, Rhode Island, South Carolina, Texas.
[2] California, Colorado, Idaho, Illinois, Iowa, Kansas, Mississippi, Missouri, Montana, Nebraska, New York, Ohio, Oklahoma (adds, Legislature to provide).
[3] Louisiana.
[4] Kentucky.
[5] Alabama.
[6] Michigan, North Dakota, South Dakota, Wisconsin.
[7] New Mexico.
[8] Delaware.
[9] Washington.
[10] Indiana, Virginia, Vermont.
[11] Arkansas, Florida, Georgia, Maine, New Hampshire, New Jersey, Tennessee.
[12] West Virginia.
[13] Maryland.
[14] Arizona, Wyoming.
[15] Oregon, Utah.

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California: Judicial officers, except justices of the peace, may be removed by the Senate on the recommendation of the Governor; but justices of highest court, intermediate court of appeals and general trial courts may be removed by a concurrent resolution of both houses of the Legislature by a two-thirds vote of each house.

New York: Judicial officers, except justices of the peace and judges of inferior courts, not of record, may be removed by the Senate on the recommendation of the Governor; but justices of the highest court and intermediate courts may be removed by concurrent resolution of both houses of the Legislature by a two-thirds vote of each house.

Maine: Judicial officers may be removed by the Governor on address of both branches of the Legislature.

Only eight constitutions contain provisions relating to the removal of justices of the peace for malfeasance in office;[1] and of these, five specifically name the officer who shall remove the offender, he being in each case a judicial officer.[2] In the other States, no removing officer is named, or it is left subject to legislative regulation.[3] The right to trial by jury is expressly reserved in one constitution;[4] and in two, the accused is expressly given the right of appeal.[5] In none does the removal of a justice of the peace require the consent of any officer or body.

(*b*) *Notaries Public.* — The only other State whose constitution contains a provision similar to that of Massachusetts is Georgia, where notaries public are "removable upon conviction for malpractice in office," but no provision is made authorizing any particular officer or body to remove them. They are appointed by the judges of the Superior Court and commissioned by the Governor.

12. To attend the Governor in Administration of the Oath of Office to Senators and Representatives. — There are fifteen States whose constitutions contain provisions for the administration of the oath of office to the members of the Legislature.

In Maine and New Hampshire the administration of the oath is before the Governor and Council.

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[1] Alabama, Georgia, Illinois, Kentucky, Maryland, Ohio, Tennessee, Texas.

[2] Alabama (by general trial courts, courts of like jurisdiction, or by criminal court of county in which he holds office); Illinois (in Chicago by summary proceedings in circuit or superior court); Maryland (by judge or judges having criminal jurisdiction in the county or city); Tennessee (liable to indictment in such courts as legislature may direct); Texas (by judges of general trial court).

[3] Georgia, Kentucky, Ohio.

[4] Alabama.

[5] Alabama, Kentucky.

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In the other States it is before the Governor, [1] Secretary of State, [2] a judge of the Supreme Court,[3] or of the Circuit [4] Court, or presiding officer of either house, [5] or before a justice of the peace [6] or person authorized to administer an oath, [7] or before the Attorney-General, [8] or the members themselves. [9]

13. CONSENT TO APPOINTMENTS BY THE GOVERNOR, WHEN THE LEGISLATURE IS NOT IN SESSION, TO FILL VACANCY, UNTIL A SUCCESSOR IS CHOSEN AND QUALIFIED, IN OFFICE OF (*a*) *Secretary of State.* — The Governor has power to fill a vacancy without confirmation in all the States except Louisiana, where consent must be given by the Senate.

(*b*) *Treasurer.* — The Governor has power to fill a vacancy without confirmation in all the States except Louisiana and Maryland, where consent must be given by the Senate.

(*c*) *Auditor.* — The Governor has power to fill a vacancy without confirmation in all the States except Louisiana, where consent must be given by the Senate.

(*d*) *Attorney-General.* — The Governor has power to fill a vacancy without confirmation in all the States except Louisiana, where consent must be given by the Senate, and Maine, where consent must be given by the Council.

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[1] Idaho, Oregon.
[2] Idaho, Oregon, Rhode Island.
[3] Illinois, Idaho, Missouri, Oklahoma, Oregon, Pennsylvania, South Dakota, West Virginia, Wyoming.
[4] Illinois, Missouri, South Dakota, West Virginia.
[5] Idaho, Missouri, South Dakota.
[6] West Virginia, Wyoming.
[7] Oklahoma, West Virginia.
[8] Rhode Island.
[9] Iowa.

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SUPPLEMENT.

STATUTORY POWERS AND DUTIES OF THE GOVERNOR AND COUNCIL.

CONVENTION DOCUMENT No. 365.

PREPARED BY THE COMMISSION TO COMPILE INFORMATION AND DATA FOR THE USE OF THE CONSTITUTIONAL CONVENTION.

INTRODUCTION.

The following compilation was made in response to a request from a committee of the Convention for information as to the powers and duties conferred upon the Governor and Council by statute. No such compilation has ever been made. It is a work of great difficulty because of the fact that the indexes of the annual volumes of session laws contain so few references to the information desired as to be of no help, and hence an examination, page by page, of all the enactments of the Legislature now in force would be necessary in order to make the compilation complete. In the short time at the disposal of the Commission such an examination was impossible, and therefore this compilation is confined to the laws of the last three years, — namely, 1915, 1916 and 1917. While it has been made with great care it is possible that some statutes conferring powers upon the Governor and Council have been overlooked.

No one can examine the statutes of recent years without being impressed by the growing tendency of the Legislature either to confer powers and duties upon the Governor and Council directly, or to provide that the action of other officers of the State shall be subject to their approval. The number of acts and resolves conferring power upon the Governor and Council enacted in 1915 was 53. In 1916 the number of such measures was 61 and in 1917 it was 37. Some of these acts contain several provisions of this kind. In addition to the foregoing, 34 acts and resolves were passed in 1915, 1916 and 1917 conferring power upon the Governor alone. The Constitution of the Commonwealth and the statutes which deal specifically with the powers and duties of the Governor and Council give slight indication

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of the extent of those functions since a large part of them are conferred as incidental to other legislation. It is only by a systematic examination of all the statute law of the Commonwealth, such as is here presented for the past three years, that the range of the activities of the Governor and Council would appear.

I. Appointments to be made by the Governor with the Advice and Consent of the Council.

General Acts, 1915.

Chap. 79. The Board of Trustees of the Grafton State Hospital.
Chap. 129. Certain members of the Homestead Commission.
Chap. 189. The Trustees of the Norfolk County Agricultural School.
Chap. 301. The new members of the Board of Dental Examiners.[1]
Chap. 304. Additional Masters in Chancery for certain counties.[1]

Resolves, 1915.

Chap. 20. The Pilgrim Tercentenary Commission, a special commission of seven.
Chap. 58. A commission to consider the erection of a monument to Col. Henry Tillinghast Sissin.
Chap. 81. A special board to report as to the advisability of providing military education for boys, etc.
Chap. 95. A special commission to codify the laws relating to State highways.

General Acts, 1916.

Chap. 46. Members of the Dairy Bureau of the Board of Agriculture annually.
Chap. 49. Three members of the State Board of Agriculture.
Chap. 70. Masters in Chancery as vacancies occur.[1]
Chap. 241, Sec. 3. The Director of Prisons.
Sec. 4. The members of the Advisory Prison Board.
Sec. 5. The Board of Parole, which acts as advisory Board of Pardons.[1]
Chap. 285, Sec. 2. Members of the Commission on Mental Diseases.[1]
Chap. 288, Sec. 2. The members of the Commission on Waterways and Public Lands.
Chap. 296, Sec. 2. The Supervisor of Administration.[1]
Chap. 297. A Civil Service Commissioner, annually.
Chap. 303. Members of the Minimum Wage Commission.

Special Acts, 1916.

Chap. 174. The Trustees of the Independent Industrial Shoemaking School of Lynn.
Chap. 310. Board of Excise of Chelsea.[1]

[1] Removals are made in like manner.

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Resolves, 1916.

Chap. 30. A commission to consider abolishing the office of trial justice.

Chap. 43. A commission to arrange and consolidate the General Laws of the Commonwealth.

Chap. 81. A special commission to investigate the laws relating to the partition of real estate, etc.

Chap. 106. Three members of a special commission to make an investigation of education at the Massachusetts Agricultural College.

Chap. 107. The Pilgrim Tercentenary Commission, a special commission of five.

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Chap. 63. The State Forester.[1]

Chap. 321. Members of the Massachusetts Bureau of Immigration.[1]

Chap. 325. Two of the members of the Exposition Building Commission for erecting a building in West Springfield.

Chap. 326. Justices of the Peace to act as trial justices in certain towns.[1]

Chap. 327, Sec. 40. One of the Armory Commissioners.

Chap. 344, Part 1, Sec. 1. A member of the State Highway Commission, annually.

Resolves, 1917.

Chap. 102. A commission to investigate the laws relating to dogs.

Chap. 129. Two of the members of the special commission to investigate problems relating to street railways.

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Chap. 294. The head of the Department of University Extension, appointed by the Board of Education.

General Acts, 1916.

Chap. 40. Employees in the Insurance Commissioner's office, appointed by the Commissioner.[1]

Chap. 269, Sec. 17. An income tax assessor for each income tax district of the Commonwealth, deputy income tax assessors, and their assistants, all appointed by the Tax Commissioner.[1]

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[1] Removals are made in like manner.

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Chap. 285, Sec. 4. Subordinate officers appointed by the Director of the Commission on Mental Diseases.

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Chap. 296. Deputies appointed by the Supervisor of Administration.

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Chap. 238, Sec. 6. The salary of the fourth assistant of the Tax Commissioner and those of the examiners.

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Chap. 296. The salary of the clerk employed by the State Examiners of Electricians.

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Chap. 296. The salaries of the deputies appointed by the Supervisor of Administration.

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General Acts, 1917.

Chap. 28. The compensation of the Commission to Compile Information for the Constitutional Convention.

Chap. 63. Salary of the State Forester.

Chap. 321. The salaries of the assistants of the Bureau of Immigration.

Chap. 342, Sec. 24. The compensation of the special committee appointed by the Board of Labor and Industry.

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Chap. 85. Certain sums to be spent by the Harbor and Land Commission for reporting on the use of beaches in Essex County.

Chap. 95. Sums for necessary expenses of the Commission on Codifying the Laws relating to State Highways.

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Chap. 134. Sums for the expenses of the Commission to investigate the advisability of revising the Taxation Laws.

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Chap. 144. Sums for the necessary expenses of the Commission on Terminal Facilities of the Metropolitan district.

Chap. 147. A sum of $6,000 to send representatives to the Panama-Pacific Exposition.

General Acts, 1916.

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Chap. 225. The balance of the appropriation to the Board of Managers of the Panama-Pacific Exposition for the return of exhibits.

Chap. 367. The appropriation for the examination as to salaries paid to State and county officials.

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Chap. 155. A sum of $5,000 re-appropriated for closing the affairs of the Board of Panama-Pacific Managers for Massachusetts.

Chap. 157. Sums for the necessary expenses of the Commission on Social Insurance.

Chap. 158. Sums for the necessary expenses of the Commission to investigate the financial condition of the Boston Elevated Railway Company.

Special Acts, Extra Session, 1916.

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General Acts, 1917.

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Chap. 321. Sums for necessary expenses of the Massachusetts Bureau of Immigration.

Chap. 342, Sec. 24. Sums for the necessary expenses of the special committee appointed by the Board of Labor and Industry.

Sec. 27. Funds from the $1,000,000 appropriated for military and naval purposes may be used to defray expenses incurred in registering alien enemies, etc.

Special Acts, 1917.

Chap. 4. A sum of $100,000 for "extraordinary expenses."

Chap. 202. A sum of $1,000,000 for defraying military and naval expenses arising from the possibility of war.

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Chap. 285. A sum of $50,000 for incidental expenses connected with the work of the Constitutional Convention.

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Chap. 188, Sec. 2. To pay for improvements on the southerly bank of the Charles River Basin.
Chap. 199, Sec. 2. To pay for the State's share of expense in deepening the channel of Weymouth Fore River.

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Chap. 221, Sec. 4. To pay for the construction of certain highways in Western Massachusetts.[1]
Chap. 229, Sec. 21. To pay for a highway in the town of Ashburnham.
Chap. 230, Sec. 2. To pay for constructing a highway from Norton to Taunton.
Chap. 232, Sec. 2. To pay for improving the highway from Milford to Southborough.
Chap. 242, Sec. 2. To pay for improving the highway between Mashpee and Barnstable.
Chap. 243, Sec. 2. To pay for extending the Alewife Brook Parkway.
Chap. 256, Sec. 3. To pay for West Wing of the State House.
Chap. 257, Sec. 2. To pay for improving the highway from North Brookfield and Barre Plains.
Chap. 276, Sec. 2. To pay for reconstructing Wellington Bridge.
Chap. 279, Sec. 5. To pay for improving the harbor and terminal facilities of Fall River.
Chap. 300, Sec. 6. To pay for building a new bridge over the Neponset River.

Special Acts, 1915.

Chap. 368. To pay for building a bridge over the Charles River between Newton and Weston.

General Acts, 1916.

Chap. 181. To pay for completing the West Wing of the State House.
Chap. 186. To pay for improving the lands given to the Commonwealth by Arlington.[1]
Chap. 203. To pay for improving the State highway in Dracut and Methuen.
Chap. 204. To pay for constructing a highway from Norton to Taunton.
Chap. 219. To pay for improving a highway in the towns of Milford and Hopkinton.
Chap. 230. To pay for lands acquired and for construction of a highway in Revere.
Chap. 235. To pay for constructing a parkway from Blue Hills Reservation to Granite Street, Quincy.
Chap. 237. To pay for completing the Dedham parkway.
Chap. 250. To pay for land taken by the State House Commission on the west side of the State House.
Chap. 310. To provide additional pay for Massachusetts soldiers in the Federal service on the Mexican border.

General Acts, 1917.

Chap. 211, Sec. 1. To provide additional pay for the Massachusetts soldiers in the volunteer service of the United States.
Chap. 220. To pay for the completion of the new bridge over the Neponset River.
Chap. 285. To pay for extending the South Metropolitan Sewer to Wellesley.

[1] The method of payment and time of payment are subject to like approval.

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Chap. 316, Sec. 2. To pay for land taken for a boulevard in Quincy.
Chap. 324, Sec. 2. To pay for the "emergency expenses incident to the war."
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General Acts, 1916.

Chap. 273. Persons employed in prison service in the Commonwealth.

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General Acts, 1915.

Chap. 294. The quarters of the Department of University Extension.

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Chap. 28, Sec. 3. Quarters for the Commission to Compile Information for the Constitutional Convention.

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XII. Emergency Measures which may be taken by the Governor, with the Approval of the Council.

General Acts, 1917.

Chap. 324. Emergency expenses up to $1,000,000 may be incurred.

Chap. 342, Sec. 2. Certain persons above the age of 18 years may be required to register.

Sec. 3. The method of registration, restrictions as to movements, etc., of those registered.

Sec. 6. Certain articles of military value may be requisitioned, a reasonable price to be paid therefor.

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Sec. 25. The use of fireworks may be regulated.

XIII. Transfer, Taking, and Use of Land which require the Approval of the Governor and Council.

General Acts, 1915.

Chap. 256, Sec. 1. Land taken by the State House Commission for completing the West Wing of the State House.

Special Acts, 1915.

Chap. 329. The sale of certain land by the Trustees of the Massachusetts Agricultural College.

General Acts, 1916.

Chap. 127, Sec. 2. The use of State property by United States volunteer military or naval forces.

Chap. 136. Land taken by the State Forest Commission for cultivation of timber.

Chap. 207. The transfer by the Governor of certain land in Framingham belonging to the State, for the erection of a military monument.

Chap. 250. Land taken by the State House Commission for the completion of the West Wing of the State House.

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Special Acts, 1916.

Chap. 317. The exchange of certain lands by the Massachusetts Agricultural College.

Chap. 355. Charges may be made by the Governor and Council for land in Framingham used by certain railroads.

Resolves, 1916.

Chap. 130. Purchase of certain lands by the Massachusetts Agricultural College.

General Acts, 1917.

Chap. 147. The exchange of certain lands by the Armory Commissioners.

Chap. 158. The exchange of certain property of the Taunton State Hospital by the Commission on Mental Diseases.

Chap. 310, Sec. 1. The purchase of land by the Homestead Commission to relieve congestion.

Chap. 325, Sec. 2. The lease of land for the erection of a building at the West Springfield Exposition, and terms of lease.

Chap. 327, Sec. 21. The use of lands belonging to the State by the United States volunteer military forces.

Sec. 41. The taking of land by the Armory Commission for parade grounds, etc.

Chap. 344, Part I, Sec. 18. The taking of land for securing road material, by the State Highway Commission.

Special Acts, 1917.

Chap. 213. Conveyance of land by the Armory Commission to the town of Woburn.

XIV. Military Measures requiring either the Approval of the Governor and Council or of the Council Alone.

General Acts, 1916.

Chap. 127, Sec. 1. The transfer of the State naval or military forces into Federal service.

General Acts, 1917.

Chap. 327, Sec. 18. During military maneuvers safety regulations as to traffic may be made.

Sec. 20. The transfer of Massachusetts military and naval forces to Federal service.

Sec. 41. Erection of buildings needed for the use of the militia.

Sec. 42. Purchase of certain second class armories, drill fields, etc.

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XV. Miscellaneous Transactions requiring the Approval of the Governor and Council.

General Acts, 1915.

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Chap. 184. The removal of aged prisoners in the State Prison to the State Farm by the officers of the State Prison.

Special Acts, 1915.

Chap. 363. The construction of a street railway from Summer Street to Commonwealth Pier by the Directors of the Port of Boston.

Chap. 369. Printing the account of the Spencer trial by the Attorney-General.

Resolves, 1915.

Chap. 5. The issuance of a duplicate interest-bearing bond to replace a lost one.

Chap. 141. An estimate of the probable expenses of the Commission investigating the "London Sliding Scale" System.

General Acts, 1916.

Chap. 183. Cheap iron buildings for accommodating prisoners erected by the prison commissioners.

Chap. 192. Investment of certain funds of the Commonwealth by the Treasurer and Receiver-General.

Chap. 239. The temporary release of life patients in an Insane Hospital by the superintendent.

Chap. 248. The publishing of reports of capital trials by the Attorney-General.

Chap. 285 Sec. 4. The work of the Director of the Commission on Mental Diseases.

Resolves, 1916.

Chap. 86. The town of Framingham may construct a drain through the State Camp Grounds, if so allowed by the Governor, with the approval of the Council.

General Acts, 1917.

Chap. 28, Sec. 2. The printing of material for the use of the Constitutional Convention.

Chap. 344, Part I, Sec. 10. Construction of State highways in excess of ten miles in any county.

Chap. 343. Transfer of certain funds from the ordinary revenue, the Metropolitan Park Commission's funds, the Metropolitan Sewerage Commission's funds, etc., for temporarily increasing the wages of certain State employees.

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Resolves, 1917.

Chap. 127. Changes in the appropriation for the school at Belchertown made by the Commission on Mental Diseases.

XVI. Miscellaneous Provisions.

Resolves, 1915.

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Chap. 130. The Governor and Council shall open and examine the votes cast on the question of so amending the Constitution as to allow women to vote.

Chap. 140. The Governor and Council shall examine the votes cast on the question of so amending the Constitution as to provide for an income tax.

General Acts, 1916.

Chap. 98, Sec. 1. The Governor and Council shall examine the votes cast to determine whether or not a constitutional convention shall be held.

Chap. 296, Sec. 7. On request of the Council the Supervisor of Administration shall make a report on the estimates for appropriations of departments.

General Acts, 1917.

Chap. 109, Sec. 2. Copies of the votes for the election of certain officials shall be submitted to the Governor and Council by the Secretary of State. The Governor and Council shall examine the same and determine the result of the election.

Sec. 3. A duplicate copy of the voting lists of precincts shall be transmitted to the Governor and Council.

Resolves, 1917.

Chap. 29. The Governor and the members of the Council shall serve on the committee representing the State at the reception of the G. A. R. veterans.

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BULLETIN No. 4

THE PARDONING POWER

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THE PARDONING POWER.

I. DEFINITIONS.

Most of the State constitutions, in conferring the pardoning power upon the executive, divide the various exercises of clemency into the following classes: —

A. Commutation.
B. Pardon.
C. Remission of Fines, Penalties and Forfeitures.
D. Reprieve.

The Constitution of Massachusetts confers upon the Governor, with the advice of the Council, the "power of pardoning offences." The Supreme Judicial Court of Massachusetts, in a written opinion to the Governor on the extent of his power to grant pardons, has stated that this power is comprehensive and that it includes "not only that absolute release from the penalty which is referred to commonly as a pardon, but those lesser exercises of clemency which are described as conditional pardon, commutation of sentence and respite of sentence."[1] This broad interpretation of the term "pardon" renders it unnecessary to specify the various kinds of executive clemency in the Constitution of this Commonwealth.

The Constitution of the United States specifies "reprieves" and "pardons."[2]

II. BRIEF SURVEY OF ORIGIN AND DEVELOPMENT IN UNITED STATES.

In England, the power of pardoning offences has always been a prerogative of the Crown.

If neither pregnancy, insanity, non-identity, nor other plea will avail to avoid the judgment and stay execution consequent thereupon, the last and surest resort is in the king's most gracious pardon; the granting of which is the most

[1] The Opinion of the Justices to the Governor, 210 Mass. 609, 611.
[2] *Constitution of the United States*, Art. II, Sect. 2.

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amiable prerogative of the Crown. . . . The king himself condemns no man; that rugged task he leaves to his courts of justice; the great operation of his sceptre is mercy. His power of pardoning was said by our Saxon ancestors to be derived *a lege suae dignitatis;* and it is declared in parliament, by statute 27 Hen. VIII, c. 24, that no other person hath power to pardon or remit any treason or felonies whatsoever: but that the king hath the whole and sole power thereof, united and knit to the imperial crown of this realm.[1]

Nevertheless, Parliament could also grant pardons,[2] and such legislative pardons are as effective as those granted by the Crown, except that they do not remove certain disabilities. This double source of pardons in England gave rise to some confusion and a conflict of views in this country, in relation to the power of the legislatures to grant pardons where the constitutions do not expressly prohibit them from so doing or specifically give exclusive power to the executive or a board.[3]

In pre-Revolutionary days in this country, when the government of the colonies was founded in royal commissions or charters, the power of pardoning offences was usually delegated to the colonial administrative representatives of the Crown, or to the grantees named in the charters.

At the time of our separation from Great Britain, the power to grant reprieves and pardons had been employed by the king as chief executive and the colonies had been accustomed to the use of it in various forms. Hence where the words to grant pardons were used in the Constitution they referred to the authority as exercised by the English Crown or by its representatives in the colonies. Chief Justice Marshall said: "As the power has been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of prescribing the manner in which it is to be used by the person who would avail himself of it." [4]

The Federal Constitution confers upon the President "power to grant Reprieves and Pardons for offences against the United States except in Cases of Impeachment." [5]

In the State constitutions framed immediately after the Revolution, the pardoning power was conferred on the Governor and his Council,

[1] 4 Blackstone, *Commentaries*, 397 (Sharswood Ed.).
[2] 4 Blackstone, *Commentaries*, 401 (Sharswood Ed.); U. S. v. Wilson, 7 Pet. (32 U. S.) 160.
[3] See discussion under III, *post*.
[4] Finley and Sanderson, *American Executives and Executive Methods*, 85; U. S. v. Wilson (1833), 7 Peters 150.
[5] *Constitution of the United States*, Art. II, Sect. 2.

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where there was one, or on the Governor alone. Of the seven States that originally had a Council and abolished it,[1] three subsequently established a Board of Pardons,[2] three left the power in the Governor,[3] and one leaves it to the Legislature to establish a council of officers of State which shall advise the Governor in the granting of pardons.[4]

The first constitution to establish a Board of Pardons and delegate to it the power of pardoning offences was that of New Jersey, of 1844, and that example was followed subsequently by Nevada in 1864, Florida in 1868, Idaho in 1889 and Utah in 1895.

The first variation from the New Jersey plan was that in the Constitution of Minnesota in 1857, where the power of pardoning offences is conferred upon the Governor "in conjunction with" a Board of Pardons. This practice was followed by North Dakota in 1889.

The next variation came in the Constitution of Pennsylvania in 1873, which provided for the exercise of the pardoning power by the Governor "upon the recommendation in writing" of a Board of Pardons or a majority thereof. This practice was followed in Louisiana in 1879, South Dakota in 1889, and Delaware in 1897.

The first instance where the consent of the Senate was required to any exercise of the pardoning power was the provision in the Constitution of Mississippi in 1832, which is still in force and which is to the effect that all remissions of forfeitures by the Governor must have the consent of the Senate. In 1854 the Constitution of Rhode Island was altered by an amendment still in force which requires the consent of the Senate to all pardons.

In 1889 the Constitution of Montana established a Board of Pardons and provided that the granting of all pardons shall be only "with the approval" of the Board. No other constitution employs that phraseology.

The only instances where the establishment of the Board of Pardons is left to the Legislature are in Indiana and South Carolina.

In the Constitution of Indiana of 1851 it is provided that the Legislature may establish a council of officers of State without whose approval the Governor shall not pardon; and in the Constitution of

[1] See Bulletin No. 3, *The Abolition of the Governor's Council.*
[2] Delaware (in 1897), Pennsylvania (in 1873), Rhode Island (in 1854, Senate acting as Board of Pardons).
[3] Maryland, Virginia, Vermont.
[4] South Carolina (in 1895).

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South Carolina of 1895, it is provided that the Legislature may establish a council of officers of State to advise the Governor in the granting of pardons.

In 1901 the Constitution of Alabama established a Board of Pardons which is advisory only, and before whom are to be laid only applications for pardon, commutation or parole in cases of felony. That seems to be the only State where the recommendation or approval of the Board of Pardons is not a prerequisite to the valid exercise of the pardoning power.

III. IN WHOM VESTED.

A. In General.

The President of the United States has "power to grant Reprieves and Pardons for offences against the United States except in Cases of Impeachment."[1] "The Constitution does not forbid pardon before conviction. Therefore, it may follow immediately the commission of an offence, but not . . . go before. To attempt the latter would be an encroachment upon powers exclusively legislative; in other words, it would be an endeavor to annul the law of the land."[2]

With the exception of six,[3] the State constitutions expressly permit the exercise of the pardoning power only "after conviction."

Except in Connecticut, the pardoning power is vested in the Governor, or in a Board of Pardons or Council, or in both. Although, with few exceptions, none of the constitutions expressly limits the exercise of the power to the executive department, or prohibits the Legislature from exercising it,[4] and although many expressly provide that its exercise shall be subject to general regulations prescribed by law, yet, inasmuch as the constitutions usually make the division between the departments of government complete and forbid any one of the three departments to exercise powers properly belonging to another, the weight of legal opinion is that pardons, being grantable under constitutional provision by the executive, cannot be granted by the Legislature. Moreover, the constitutions usually forbid the passage of any special or private law; and it would probably be a

[1] *Constitution of the United States*, Art. II, Sect. 2.

[2] Bishop, *New Criminal Law*, 8th ed., I, 904.

[3] Kansas, Kentucky, Maryland, Oregon, Vermont, Washington.

[4] The Constitution of Vermont expressly provides that no person ought to have this sentence on conviction for felony commuted, remitted or mitigated by the Legislature; and the Constitution of Mississippi gives the Legislature power to provide for the commutation of sentence of convicts for good behavior.

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violation of such provision for the Legislature to pardon an individual person.

It is to be noted, however, that in the constitutions of many States, the exercise of the pardoning power is expressly made subject to regulations prescribed by the Legislature, either in general or as to some particular phase of procedure.[1] That gives to the Legislature in such States a participation in the pardoning power in a general way, though not in any individual petition for pardon. Legislative pardons are not common in this country. On the nature of the pardoning power the Supreme Court of the United States said in a leading case:

> Whether the power to pardon is an exclusively executive function has been much debated, and authorities may be found for either contention. It is assumed in all the constitutions that it needs to be conferred on the executive in order to be rightfully exercised. Under the Federal Constitution legislation has conferred upon the Secretary of the Treasury power to remit fines and forfeitures. The practice commenced in 1797 and was in accordance with legislation in England, which, without interfering with the power of pardon belonging in the crown, invested certain subordinate officers with authority to remit penalties and forfeitures arising from violations of the revenue laws of that country; it was upheld by the Supreme Court in 1885, as justified by such a long practice and acquiescence as to amount to a settled interpretation of the Constitution. But the power of pardon conferred by the Constitution upon the President is unlimited, except in cases of impeachment.[2]

B. In Massachusetts.

The Constitution of Massachusetts provides as follows: "The power of pardoning offences, except such as persons may be convicted of before the Senate by an impeachment of the House, shall be in the Governor, by and with the advice of the Council; but no charter of pardon, granted by the Governor, with advice of Council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned." (Part II, Chap. II, Sect. 1, Art. VIII.) On the question of the extent of the power of the Governor and his Council under that provision, the Supreme Judicial Court, in a written opinion to the Governor, has stated as follows:

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[1] See *post*, 147.

[2] *Ex parte* Garland (1866), 4 Wall. 333.

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The unmistakable meaning of these words is that he can act only in conformity to the advice of the Council. He may decline to take action although the Council advise him to do so. Responsibility for granting a pardon rests upon the Governor and he cannot be compelled to take such action by the Council. . . . The Governor is not required to ask the advice of the Council in forming his opinion. He may refuse to pardon without first referring the matter to the Council. But if he desires to grant a pardon, he must take the advice of the Council before undertaking to act. . . . The power to pardon as vested in the Governor is not absolute but conditional, and that condition is that it shall be exercised in accordance with the advice of the Council. . . . The same principle applies whether the act be a complete or a modified pardon. A commutation of sentence, which is the substitution of a lighter for a more severe punishment, is an exercise of the pardoning power and must be in accordance with the Constitution. It is an act of the Governor which becomes effective only when concurred in by the Council.[1]

C. In Other States having Council.

In New Hampshire,[2] the provision is identical with that of Massachusetts.

In Maine, the Governor has power, "with the advice *and consent* of the Council, to remit, after conviction, all forfeitures and penalties, and to grant reprieves, commutations and pardons, except in cases of impeachment, upon such conditions and with such restrictions and limitations, as may be deemed proper, subject to such regulations as may be provided by law, relative to the manner of applying for pardons. And he shall communicate to the Legislature at each session thereof, each case of reprieve, remission of penalty, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the reprieve, remission, commutation or pardon, and the conditions, if any, upon which the same was granted."[3]

[1] The Opinion of the Justices, 210 Mass. 609, 611. See also Opinion of the Justices, 190 Mass. 616.
[2] *Constitution of New Hampshire*, 1902, Art. 51.
[3] *Constitution of Maine*, Part I, Art. V, Sect. 11.

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D. In States having no Council.

1. *In the Governor alone.*

In twenty-five States, the Governor has sole power to commute.[1]

In thirty-two States, he has sole power to pardon, except in cases of treason or impeachment, or both.[2]

In twenty States, he has sole power to remit fines and forfeitures.[3]

In forty States, he has sole power to grant reprieves.[4]

2. *In the Governor and Board of Pardons.*

In seven States, the Governor has power to commute on recommendation of the Board of Pardons,[5] in conjunction with it,[6] or with the approval of the Board or the Council.[7]

In ten States, the Governor has power to pardon on recommendation of the Board of Pardons,[8] in conjunction with it,[9] or with the approval of the Board or the Council.[10]

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[1] Alabama (Board of Pardons advisory only), Arkansas, Arizona, California (but neither Governor nor Legislature to have power to grant commutation of sentence in any case where convict has been twice convicted of felony, except upon written recommendation of a majority of the judges of the highest court), Colorado, Georgia, Iowa, Illinois, Indiana, Kentucky, Michigan, Missouri, Nebraska, North Carolina, New York, Ohio, Oklahoma, Oregon, South Carolina, South Dakota (where sentence is for 2 years or less, or fine is $200 or less), Texas, Virginia, West Virginia, Wisconsin, Wyoming.

[2] Alabama (Board of Pardons advisory only), Arkansas, Arizona, California (but neither Governor nor Legislature to have power to grant pardon in any case where convict has been twice convicted of felony, except upon written recommendation of a majority of the judges of the highest court), Colorado, Georgia, Iowa, Illinois, Indiana (but Legislature may create council of officers of State without whose consent Governor may not pardon), Kansas, Kentucky, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, New York, Ohio, Oklahoma, Oregon, South Carolina (but Legislature may create council to advise Governor), South Dakota (where sentence is for 2 years or less or fine is $200 or less), Tennessee, Texas, Virginia, Vermont, West Virginia, Washington, Wisconsin, Wyoming.

[3] Alabama, Arkansas, Delaware, Georgia, Iowa, Indiana, Kentucky, Maryland, Mississippi, New Mexico (no fine, penalty or judgment against an officer to be remitted), Oregon, Pennsylvania, South Carolina, South Dakota (if fine less than $200), Texas, Virginia, Vermont, West Virginia, Washington, Wyoming.

[4] Alabama (Board of Pardons advisory only), Arkansas, Arizona, California, Colorado, Connecticut (not exceeding end of next session of Legislature), Delaware (not exceeding 6 months), Florida (not exceeding 60 days), Georgia, Illinois, Indiana, Iowa, Idaho (not to extend beyond next session of Board of Pardons), Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey (not exceeding 90 days after conviction), New York, North Carolina, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island (not exceeding end of next session of Legislature), South Carolina, South Dakota, Tennessee, Texas, Utah (not to extend beyond next session of Board of Pardons), Virginia, West Virginia, Wisconsin, Wyoming.

[5] Delaware, Louisiana, Pennsylvania, South Dakota (if sentence is capital punishment or imprisonment or life or for more than 2 years or a fine of more than $200).

[6] North Dakota.

[7] Maine, Montana.

[8] Delaware, Louisiana, Pennsylvania, South Dakota (if sentence is capital punishment or imprisonment for life or for more than 2 years or a fine of more than $200).

[9] Minnesota, North Dakota.

[10] Indiana (Legislature may create council of officers of State without whose consent Governor shall not pardon), Maine, Montana, Rhode Island (with consent of Senate).

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In six States, the Governor has power to remit fines and forfeitures on recommendation of the Board of Pardons,[1] in conjunction with it,[2] or with the approval of the Board or the Council.[3]

In three States, the Governor has power to grant reprieves in conjunction with,[4] or with the approval of the Board or the Council.[5]

3. *In Board of Pardons alone.*

In four States,[6] the Board of Pardons has power to commute.

In five States,[7] the Board of Pardons has power to pardon.

In five States,[8] the Board of Pardons has power to remit fines and forfeitures.

Nowhere has the Board of Pardons power to grant reprieves.

4. *In the Legislature alone.*

Connecticut is the only State in which the Legislature has sole power to grant pardons.

Twenty-one States have constitutional provisions prohibiting the remission of fines or forfeitures by special, local or private law.[9]

IV. COMPOSITION OF BOARDS OF PARDON.

Sixteen States have separate boards of pardon constituted as follows: —

Alabama: Attorney-General, Secretary of State, Auditor.

Delaware: Chancellor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor.

Florida: Governor, Secretary of State, Attorney-General, Comptroller, Commissioner of Agriculture.

Idaho: Governor, Secretary of State, Attorney-General.

Louisiana: Lieutenant-Governor, Attorney-General, presiding judge of Court of Conviction.

Maine: Governor, Council.

Massachusetts: Governor, Council.

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[1] Louisiana, South Dakota (where fine exceeds $200).
[2] North Dakota.
[3] Maine, Mississippi (with consent of Senate), Montana.
[4] North Dakota, Minnesota.
[5] Maine.
[6] Florida, Idaho, Nevada, Utah.
[7] Florida, Idaho, Nevada, New Jersey, Utah.
[8] Florida, Idaho, Nevada, New Jersey, Utah.
[9] Alabama, Arizona, California, Colorado, Idaho, Illinois, Kentucky, Louisiana, Minnesota, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Washington, West Virginia, Wyoming.

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Minnesota: Governor, Attorney-General, Chief Justice of highest court.
Montana: Secretary of State, Attorney-General, Auditor.
Nevada: Governor, Attorney-General, justices of highest court.
New Hampshire: Governor, Council.
New Jersey: Governor, Chancellor, judges of highest court.
North Dakota: Governor, Attorney-General, Chief Justice of highest court, two qualified electors appointed by the Governor.
Pennsylvania: Lieutenant-Governor, Secretary of State, Attorney-General, Secretary of Internal Affairs.
South Dakota: Secretary of State, Attorney-General, presiding judge of court of conviction.
Utah: Governor, Attorney-General, justices of highest court.

From the above tabulation, it will be seen that in ten of the sixteen States having a Board of Pardons the Governor is a member of it.

V. PROCEDURE AND REGULATIONS.

The constitutional provisions as to procedure in the matter of pardons are on the whole couched in general terms. The most common provision is to the effect that the power to grant pardons, commutations, remissions and reprieves shall be subject to the regulations prescribed by law relative to the manner of applying therefor;[1] or merely subject to regulations prescribed by law.[2] A few constitutions have detailed provisions requiring publication of notice of the filing of the application,[3] or of the time and place of hearing.[4] A few constitutions require a "full"[5] or public hearing before the Board,[6] or provide that the sessions of the Board shall be prescribed by the Legislature,[7] or require the opinion of the Board to be in writing[8] or provide that the Board shall meet on the call of the Governor.[9] Such detailed provisions as these are to be found chiefly in the constitutions of the newer States.

[1] California, Colorado, Florida, Georgia, Idaho, Illinois, Maine, Michigan, Missouri, Nebraska, Nevada, North Carolina, North Dakota, New York, Ohio, South Dakota, Utah, Wisconsin, Wyoming.
[2] Arizona, Iowa, Kansas, Minnesota, New Mexico, Oklahoma, Oregon, Washington.
[3] Idaho, Maryland, Mississippi, Montana.
[4] Idaho, Montana, Pennsylvania, Utah.
[5] Delaware, Idaho, Montana, Pennsylvania, South Dakota, Utah.
[6] Alabama, Idaho, Montana, Pennsylvania, South Dakota, Utah.
[7] Idaho, Montana.
[8] Alabama, Delaware, Louisiana, Pennsylvania, South Dakota.
[9] Alabama.

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VI. REPORT OF ACTION.

The constitutions of nearly all the States require the Governor or the Board of Pardons to report to the Legislature, either at each regular session thereof,[1] biennially[2] or annually,[3] each case of commutation, pardon, remission or reprieve and the details thereof. A few require that a report, in more or less detail, be filed in the office of the Secretary of State;[4] one merely provides that the application and decision shall be open to public inspection;[5] one that the Governor shall submit to the Legislature his reasons for rejecting the recommendation of the Board;[6] and one that he shall report each case to either house whenever required.[7]

The most common provision of this nature is that the Governor or Board shall communicate to the Legislature at each regular session each case of commutation, pardon or reprieve granted, or fine, penalty or forfeiture remitted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of commutation, pardon, remission or reprieve, and the reasons for granting the same.

In Massachusetts, although the Constitution does not require a report of action, the same result is reached in another way. In compliance with the request contained in Chapter 50 of the Resolves of the General Court of 1860,[8] the Governor transmits annually to the Legislature a list of all pardons granted during the year preceding. The report of each case sets out substantially the same facts as are enumerated in the detailed provision of the Constitution of Maine relating to report of action,[9] and in the constitutions of the other States here discussed. So long, therefore, as the Governor and Council comply with that request of the Legislature, there is no need of incorporating into the Constitution any detailed provision requiring report of action. Whether the Governor and Council *must*

[1] Alabama, Arkansas, California, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Maine, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wyoming.

[2] North Carolina.

[3] Colorado, New York, Wisconsin.

[4] Delaware, Idaho, Montana, Pennsylvania, South Dakota, Texas, Utah.

[5] Kentucky.

[6] South Carolina.

[7] Maryland.

[8] "*Resolved*, That the Governor and Council be requested, hereafter, in the month of January, in each year, to communicate to the General Court a list of the pardons granted during the year next preceding, with such detailed statements as in their judgment the public good may require."

[9] See page 146, *ante*.

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comply is almost a moot question, since it is highly improbable that they would refuse to meet so reasonable a request, especially after having pursued an opposite course for more than a half-century.

No such report is required by the Constitution from the President of the United States, nor from the executives of the remaining thirteen States.[1]

VII. CHANGES PROPOSED IN THE CONVENTION OF 1853.

The Convention of 1853 having decided to retain the Governor's Council as part of the frame of government, various changes in connection with the exercise of the pardoning power were suggested and debated, but none were adopted.[2] Most of the provisions suggested are to be found in the constitutions of other States.

The following is a summary of the proposed reforms and the arguments presented on both sides in the debates thereon: —

A. Publication of notice of application, or of time and place of hearing, or both.

Arguments in support: —

1. Increased feeling of safety in the community resulting from the opportunity to know of the application and to present objections.

2. The Governor and Council are enabled to secure more complete information, and are protected against mistakes in their decision.

3. The Governor and Council should hear both sides of the case instead of only one side.

4. Added expense would be trivial and could be borne by the Commonwealth.

Arguments in opposition: —

1. An absolute pardon restores the criminal to his civil rights, and is commonly granted after he has gone forth from prison and established a good reputation among his fellow citizens. "Now, what will be the effect of giving notice in such a case? The effect will be to bring back the remembrances of the transaction which made the person an offender, thus blighting his hopes forever, after he has endeavored by years of unceasing labor to regain the confidence of his friends and neighbors." [3]

[1] Arizona, Connecticut, Illinois, Kansas, Louisiana, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, Rhode Island, Tennessee, Vermont.

[2] *Debates in the Massachusetts Convention, 1853*, I, 966–986.

[3] *Debates in the Massachusetts Convention, 1853*, I, 974 (Davis).

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2. It is a mark of distrust of the Governor and Council, and a reflection upon their performance of their duty.

3. Many criminals would be barred from executive clemency because of inability to obtain funds to publish notice and to secure the necessary copies of the record of the case.

4. Advisable to exclude from the Constitution matters of procedural detail, which are more adapted to legislative action.

B. Notice to the prosecuting attorney or to the Attorney-General of each application for pardon, and requiring his presence at the hearing.

Arguments in support: —

1. Such officer is acquainted with the side of the case which the Governor and Council are not likely to hear in an *ex parte* proceeding, and can therefore assist them in avoiding mistakes in decision.

2. Increased feeling of safety in the community because of opportunity of the prosecuting officer to present objections.

Arguments in opposition: —

1. Whenever necessary the Governor and Council call in the prosecuting officer anyway.

2. The prosecuting officer may have become so wrought up over the case as to be unduly prejudiced against the petitioner, and thus possibly defeat the purposes of justice.

3. Advisable to exclude from the Constitution matters of procedural detail, which are more adapted to legislative action.

4. The most common classes of petitions do not involve the merits of the trial. They are cases (a) where there are circumstances which mitigate the offence which the convict technically committed; (b) where the punishment imposed is imprisonment for a long term of years, and it is alleged that there has been a complete reform of character in the convict; and (c) where the convict is very near death, and the illness or disease is such that he can be removed from prison without injury and be permitted to die among his family.

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BULLETIN No. 5

A SUMMARY OF EXISTING LAWS ON OLD AGE PENSION SYSTEMS

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NOTE.

The material contained in Bulletin No. 5 is taken from A Report of a Special Inquiry relative to Aged and Dependent Persons in Massachusetts, published by the Bureau of Statistics in 1916.

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A SUMMARY OF EXISTING LAWS ON OLD AGE PENSION SYSTEMS.

DESCRIPTIVE ACCOUNT OF NATIONAL OLD AGE PENSION SYSTEMS.

Introductory.

In preparing the following matter, an endeavor has been made to describe briefly the important provisions of law governing the administration of national old age pension systems now in existence, and to present certain significant data with reference to the operation of these systems. The bibliography of recent literature on this subject, forming the appendix of this report, is evidence of the present widespread interest in old age pensions. Although much information of comparatively recent date has been published, it has appeared, for the most part, in what may be termed "secondary sources", and for this reason it has been deemed advisable to consult the "original sources", where possible, in order to verify the information herein presented, and to bring more nearly up to date the facts as to recent amendments of the more important provisions of existing old age pension laws and the data with reference to the operation of the several systems.

Two surveys similar to the present one and covering practically the same field have proved particularly helpful in this connection. One of these, prepared under the direction of a special commission, the Massachusetts Commission on Old Age Pensions, Annuities and Insurance, formed Part III of the report of that commission issued in 1910; the other, issued as late as March 1, 1915, by the Industrial Commission of Wisconsin, formed Part V of its report on "Old Age Relief" made in compliance with the provisions of Chapter 185 of the Laws of 1913 of Wisconsin. While both of these surveys have been drawn upon in the preparation of the present descriptive account, the Wisconsin survey, because of the more recent material presented therein, has served as a very fruitful source of information, and, in fact, subject to verification by reference to original sources, a considerable portion of the Wisconsin survey, with certain changes in diction and with the substitution of later data where available, has been directly quoted. Also, in citing from other sources, the phraseology has for purposes of accuracy been closely followed. References to the principal sources consulted have been given at the end of the descriptive matter for each country.

In nearly all of the leading countries statutory provision for old age insurance or pensions has been made. The widely varying insurance and pension systems adopted are of three general types: Voluntary insurance; compulsory (contributory) insurance; and non-contributory pensions. In the present review no extended consideration will be given to the first type, that of voluntary insurance, because already in Massachusetts, by Chapter 561 of the Acts of 1907, provision has been made for the establishment of a system of savings bank life insurance and, therefore, voluntary old age insurance is not deemed to be a subject for special consideration

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by the legislature at this time. Accordingly, the present survey is confined primarily to a consideration of existing systems of compulsory (contributory) old age insurance and of non-contributory old age pensions which have been established by national governments.

No general system of old age insurance or pensions has been established by the United States Government nor by any of the individual States, although there are in operation special pension systems covering certain classes of public employees, such as veterans, retired army and navy officers, State employees (in Massachusetts), and firemen, policemen, teachers and certain other municipal employees; but these systems hardly come within the scope of the present inquiry. Thus far, in the United States, the establishment of pension systems covering large groups of the population has been confined, principally, to certain important railroad systems and other industrial corporations. To a limited extent, the operations of these systems have pre-empted the field, and the establishment of any general national or State system of old age pensions would therefore result in some duplication as respects beneficiaries were the corporation systems still to continue in operation. During recent years, also, there has been a marked increase in the number of industrial insurance policies issued in this country, while many fraternal organizations and several important national labor organizations have established pension systems for the benefit of their superannuated members. Nevertheless, it is true that no very considerable portion of the population of this country, or of any of the States, is yet covered by any system of old age insurance or pensions.

VOLUNTARY OLD AGE INSURANCE.

The primary purpose in establishing State systems of voluntary old age insurance is to induce wage-earners to provide for their old age by affording them opportunities to secure, at low cost, old age insurance, with a certainty that the payment of pensions is guaranteed by the government. Usually the system adopted provides for the establishment or designation of an agency which shall collect the premiums, care for the reserve fund, and make payment of specified benefits or pensions. In most instances, the expenses of administration are met by the government and liberal subsidies are granted, thereby reducing the cost of insurance to the policy holders. In Belgium, where the subsidies in 1912 constituted about 40 per cent of the benefits paid, the system has proved more popular than in other countries where less liberal subsidies are granted, and indeed it appears to be true that the success of any voluntary old age insurance system is largely determined by the extent to which it has been subsidized by the government.

In Great Britain, Belgium, France, Italy, Spain, Canada, and Massachusetts, systems of voluntary old age insurance have been provided for by law. In Great Britain, a system of postal insurance and annuities was first instituted in 1864, and is still in operation although it has been somewhat modified by later legislation, and has in a measure been supplemented by the more recent non-contributory old age pension system established in 1908; and in France, in addition to a voluntary, contributory, old age insurance system first established in 1850, and a system of State aid for incapacitated and superannuated workers which became effective in 1907, a compulsory, contributory system was also established in 1910.

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The establishment in Great Britain and France of other pension systems which are in a sense supplementary to the voluntary systems previously established indicates that, notwithstanding the low cost at which old age insurance has been furnished, a considerable portion of the population of these two countries has failed to make provision for old age by this means, and the failure of many other countries to establish voluntary old age pension systems may be taken as an unfavorable commentary upon the success of such systems in those countries where they have been adopted.

COMPULSORY OLD AGE INSURANCE.

In those countries where old age insurance is made compulsory for certain classes of the population (usually wage-earners and persons receiving small salaries) it has not been found practicable to attempt to raise more than 50 per cent of the necessary funds from the persons insured, and, therefore, except for the provisions of law making insurance obligatory, these several systems are quite analogous to the voluntary systems under which large subsidies are granted by the government. Even in Germany, where the compulsory system has become fully operative, the insured persons contribute only 40 per cent of the funds disbursed, and in other countries, which have adopted compulsory systems, the contributions by the beneficiaries rarely exceed 30 per cent of the total disbursements. The value of the contributory principle, therefore, has not been demonstrated as particularly important in so far as the amount of the contributions is concerned, and, when the cost of collecting the contributions is taken into consideration, it is held by many who favor a non-contributory system, that the latter will provide equal benefits without much additional cost to the State over the former, and at the same time will not require the establishment of elaborate, administrative machinery for the collection of contributions, and for the recording of facts for a long period of years, with reference to the contributors. If, however, the number of countries which have adopted a compulsory, contributory system of old age insurance is any criterion, then such a system appears to be more generally favored than either a voluntary or a non-contributory system. The list of such countries includes at least eleven in all, namely: Germany, France, Sweden, Austro-Hungary, Russia, Italy, Roumania, Netherlands, Greece, Luxemburg, and Iceland.

As the compulsory, contributory system in Germany was the first of its kind established, and is, without question, the most comprehensive and most widely known, it has been selected as the first to be discussed, and the other ten countries in this group will be considered in the order as named above.

Germany. The old-age and invalidity insurance system, established in Germany in 1889, formed a part of a comprehensive system of social insurance which also included sickness insurance, established by an act of 1883, and accident insurance, established by an act of 1884. By subsequent legislation the system was extended in scope and perfected in detail, and, in 1911, the several acts and amendments were consolidated into a single code, and a new feature, that of "survivors' insurance" was added. Because of the fact that old-age, invalidity, and survivors' insurance are administered as a single system, no one feature of this system can be properly discussed without some reference to the other features, nor can data with reference to the operation of the old-age insurance feature be presented separately, so as to enable one to make comparisons (which may not be misleading) between the costs, etc., of old-age insurance in Germany and in other countries.

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As the law now stands (Code of 1911) insurance is obligatory for all persons, from the sixteenth to the seventieth year of age, whose annual earnings do not exceed 2,000 marks ($476) and who are gainfully employed as:

(1) Workmen, helpers, journeymen, apprentices or servants;
(2) Establishment officials or foremen;
(3) Clerks or apprentices in commercial establishments;
(4) Actors or musicians;
(5) Teachers or tutors;
(6) Masters or seamen of sea-going or inland vessels.

Certain classes of public employees, otherwise provided for, are exempt. Voluntary insurance is open to employers engaged in small business enterprises, to salaried employees who earn not more than 3,000 marks ($715) per year, and to wives who were insured before marriage, but the number who take advantage of these voluntary provisions is negligible. The number of persons compulsorily insured, on the other hand, embraces substantially the entire wage-earning population of the Empire. The total number of persons insured in 1914 was 11,798,922, or about 17.9 per cent of the total population of 66,096,000.

The insurance funds are derived from three sources: Insured employees, employers, and the Imperial revenues. The employer is held responsible for the insurance of all persons employed by him and for the payment of the premiums, being authorized to deduct the employees' share of the premiums from his wages. He receipts for the employees' payments by affixing government insurance stamps to the employees' receipt cards. The Imperial Government contributes a fixed sum each year toward every pension and also bears the expenses of administration and of the payment of pensions through the post-offices.

For administrative purposes the insured employees are grouped in five wage classes, determined by total annual earnings, and their contributions are made weekly in accordance with the following graded scale:

Class.	Annual Earnings.	Weekly Contribution.
I,	Less than 350 marks ($83.37).	16 pfennige ($0.038).
II,	350 to 550 marks ($131.01).	24 pfennige (.057).
III,	550 to 850 marks ($202.47).	32 pfennige (.076).
IV,	850 to 1,150 marks ($273.93).	40 pfennige (.096).
V,	More than 1,150 marks ($273.93).	48 pfennige (.114).

In 1912 the total receipts from all sources was 399,938,100 marks ($95,265,255), of which amount 34.2 per cent was contributed by employers, 34.2 per cent by employees, 13.8 per cent by the Imperial Government, and 17.8 per cent was in the nature of interest on accumulated reserves and miscellaneous receipts.

The benefits comprise: (1) Old-age pensions; (2) Invalidity pensions; (3) Sickness pensions; (4) Widows' and orphans' pensions, and (5) Medical care.

The old-age pension is payable from the seventieth birthday to a person who has made at least 1,200 weekly contributions, but payment of contributions may be omitted without loss of rights during sickness, accidental disability, or military service. The required term of insurance is so long (over 23 years) that no person could have obtained a pension before 1914. To meet this objection the required term was reduced by forty weeks for each year of age over 40 at the time the act became operative. Thus a man who was already 70 years of age in 1891 could claim an immediate pension.

An old-age pension is made up of two parts: (1) The Imperial subsidy of 50 marks ($11.91), which is the same for all pensions, and (2) The insurance annuity, which is 60 marks ($14.29) for the first wage class and increases by steps of 30 marks ($7.15) for each succeeding class. The entire pension thus ranges from 110 marks ($26.20) per year in the lowest to 230 marks

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($54.79) in the highest class. If a pensioner has been a member of different wage classes at different times, the insurance annuity is prorated. Whatever the amount, pensions are paid monthly, in advance.

The total number of old-age pensions in effect on January 1, 1914, was 87,261. The number of old-age pensions has decreased from year to year due to the increased number of invalidity pensions held by persons 70 years of age or over. By way of explanation it should be stated in this connection that when an insured person who is receiving an invalidity pension reaches the age of 70, he has the option of choosing an invalidity or an old-age pension, and the former is usually chosen because, ordinarily, it is of a larger amount.

The average amount of all old-age pensions granted in 1914 was 167.99 marks ($40.02), or about $3.33 per month. The average has slowly risen, having been 124 marks ($29.54) in 1891, 145.54 marks ($34.67) in 1900, and 166.15 marks ($39.58) in 1908. The increase is attributable to two causes: (1) Wages have been rising and the proportion of persons in the lower wage classes has consequently decreased, and (2) pensions granted during the "transitional period" (1891 to 1914) were necessarily kept low because of the small number of contributions which had been paid in by the pensioners. Each year up to 1914 the number of contributions increased and consequently the sums granted as pensions were automatically increased.

The pension age (70 years) is so high that very few live to enjoy the old-age benefit, consequently compulsory old-age insurance would naturally be unpopular were not this objection met by the granting of an invalidity pension in case of permanent disability before the pension age. Because of the interdependence of old-age and invalidity insurance, the latter should be also discussed in this connection.

Invalidity is defined as inability, through accident or disease, to earn one-third of the normal wages earned in the same occupation and locality. Accidental injury sustained in the course of employment is excluded, since incapacity from that cause is otherwise provided for. An invalidity pension can be drawn only after 200 weeks' insurance and after the payment of at least 100 weekly contributions.

An invalidity pension consists of:

(*a*) The Imperial subsidy of 50 marks ($11.91);

(*b*) A basic insurance annuity of 60 marks ($14.29) for the first class, increasing by 10 marks ($2.38) for each succeeding class; and

(*c*) A supplementary amount equal to the number of weekly contributions which the pensioner has paid, multiplied by 3 pf. ($.007) for the first class, 6 pf. ($.014) for the second, 8 pf. ($.019) for the third, 10 pf. ($.024) for the fourth, and 12 pf. ($.029) for the fifth class. Under this arrangement an invalidity pension will be greater or less than an old-age pension, according to the length of the insurance period prior to invalidity. Since 1906, however, invalidity pensions have averaged higher than old-age pensions.

The Code of 1911 provides a further allowance of 10 per cent of the invalidity pension for each child under 16, but such allowance is limited to 50 per cent in all. Of 130,609 invalidity pensions granted in 1914, 27,112 carried such allowances.

The smallest invalidity pension is 116 marks ($27.63) yearly. The average of such pensions in 1914 was 200.81 marks ($47.83), as compared with an average of 167.99 marks ($40.02) for old-age pensions. The average is increasing for the same reasons which operate in the case of old-age pensions.

The number of invalidity pensions in force at the close of 1914 was 998,339, as compared with only 87,261 old-age pensions. The number has risen steadily from 31 in 1891 to 405,335 in 1900, and 868,086 in 1908. As already explained, this increase has been accompanied by a decrease in the number of old-age pensions.

The aggregate payments on account of invalidity pensions in 1912 was 158,715,621 marks ($37,806,061) as compared with an aggregate of 14,061,878 marks ($3,349,539) for old-age pensions. The relative importance of invalidity pensions has increased and that of old-age pensions has correspondingly decreased year by year. The aggregate expenditures for these two benefits stood as 1 to 2 in 1894, as 2 to 1 in 1900, as 8 to 1 in 1908 and as 11 to 1 in 1912. In fact, the greater part of the invalidity pensions are in reality old-age pensions. Out of 103,200 invalidity and old-age pensions granted during 1912 to persons of 50 years of age or over, only

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28,702, or 27.8 per cent were to persons of 70 years of age or over while 50,677, or 49.1 per cent were to persons under 65. These figures indicate that incapacity from old age more often begins before 65 than after 70 years of age.

Ordinary cases of sickness are cared for at the expense of the sickness insurance funds. But if disability continues beyond the twenty-sixth week, a temporary invalidity or "sickness" pension (*Krankenrente*) is granted. Sickness pensions are identical in amount with invalidity pensions, and the definition of disability is the same — inability to earn one-third of normal wages. The number of such pensions in force January 1, 1914, was 16,555; the entire cost during 1912 was 3,201,735 marks ($762,653) and the average pension was 192.3 marks ($45.81).

Under the law of 1891 the only death benefit was the return of contributions to the dependents of an insured person who died before receiving a pension. This left, not only orphans, but aged and invalid widows without provision. This defect in the system was remedied, to some extent, by the widows' and orphans' pensions established by the Code of 1911. A pension is payable only to an invalid widow, but "widow's money," equal to one year's pension, is paid in any case upon the death of the husband. The widow's pension consists of the Imperial subsidy of 50 marks ($11.91) and of three-tenths of the insurance annuity to which her husband would have been entitled at the time of death. Aged women are, therefore, not as well provided for as aged men, in that the pension is only about one-half as much as that granted in case of actual invalidity. There is no "old-age" pension, as such, for women.

The widow's pension provisions became operative in July, 1912. In 1914 pensions were granted to 9,834 widows, the average amount having been 78.85 marks ($18.78) per annum, and 30,223 orphans' pensions were granted, the average amount having been 78.12 marks ($18.61).

Whenever it is believed that a case of invalidity can be benefited, or impending invalidity prevented, a course of treatment may be given, the expenditure being charged to the invalidity and old-age fund. Preventive treatment, in fact, has become one of the most beneficent activities of this branch of social insurance. Sixty-five or more sanatoria are maintained, at which about 70,000 persons are treated annually. The great cause of premature invalidity is tuberculosis, and nearly 60 per cent of all the cases treated are tubercular. The efficacy of the treatment is indicated by the fact that more than 80 per cent of the patients are discharged with "disability removed."

The expenditure for invalidity pensions increased from 7,250,000 marks ($1,726,950) in 1912 to over 9,000,000 marks ($2,143,800) in 1914, while the cost of sickness pensions rose from 24,000 marks ($5,717) in 1912 to about 360,000 marks ($85,752) in 1914. The decrease in expenditures on account of old-age pensions was, on the other hand, 400,000 marks ($95,280).

Invalidity and old-age insurance is administered by forty-one territorial and special "institutes" under the general supervision of the Imperial Insurance office. The total cost of administration in 1914 was 24,156,658 marks ($5,754,116). The cost per 1,000 marks ($238.20) of total expenses in 1914 was 81 marks ($19.29) as against 83 marks ($19.77) for the years 1912 and 1913. The Central Office, a branch of the Imperial Insurance Institute, is administered by highly trained experts. The published reports are, therefore, the most comprehensive of their kind anywhere issued.

The most striking feature of old-age relief in Germany is its correlation with a comprehensive scheme of workingmen's insurance. Accidental injury in the course of employment, sickness, child-birth, permanent invalidity, premature death and old age, all are provided for by compulsory insurance. Especially significant, in the present connection, is the interdependence of old age with invalidity and survivors' insurance. When it is understood that 60 per cent of the insured persons die before attaining the seventieth year, and that of all old-age and invalidity pensioners, 88 per cent are under 70 years of age and 54 per cent are under 60 upon first receipt of pensions, it is clear that the old-age pensions alone would afford a very unsatisfactory degree of protection, nevertheless they do constitute relatively large returns upon the investment made in the form of premiums paid by those insured.

Whatever may be the beneficial effects of social insurance in the case of individual pensioners, it cannot be denied that this system has resulted in improved standards of health and work of the general wage-earning population, and to it has been due in some large measure the remarkable industrial development of Germany in recent years.

Sources. — Annual Report of the U. S. Commissioner of Labor, 1909, Vol. I, pp. 1354–1444; German Workingmen's Insurance Code, Bulletin No. 96 of the U. S. Bureau of Labor; Amtliche Nachrichten des

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Reichsversicherungsamts (Report of the Imperial Insurance Office) 1913; Statistisches Jahrbuch für das deutsche Reich (Statistical Year Book of the German Empire) 1912 and 1914; Monatsblätter für Arbeiterversicherung, 1912, *cited in* Reichsarbeitsblatt, Bd. XI, no. 2, Feb. 1913 and Reichsarbeitsblatt, Bd. XIV, no. 3, Mar. 1916.

France. The compulsory old-age insurance law of 1910 prescribes insurance for practically all working people "of whatever nationality" who earn less than 3,000 francs ($579) per annum (including those State employees who do not come under the regulations of civil and military pensions).

The receipt of a pension is conditioned upon the regular payment of premiums for 30 years, except that the number of payments is reduced to 28 for all men who have performed at least two years military service; and for women the birth of each child is reckoned as one year's insurance, which may be deducted from the prescribed 30 payments. There are three groups of premiums depending upon age or sex, and corresponding to three wage groups for insurable wage-earners as follows: men, 9 francs ($1.74) per year; women, 6 francs ($1.16) per year; minors under 18 years of age, 4.5 francs ($0.87) per year. Responsibility for payments of premiums rests with the employer who must duplicate his employees' contributions, which are receipted for by means of stamps affixed to cards.

The original State subsidy of 60 francs ($11.58) was increased to 100 francs ($19.30) by an amendment in 1912. This annual grant is paid in those cases where the 30 prescribed subscriptions have been made, and is increased one-tenth for every insured person of either sex who shall have brought up at least three children to the age of 16. If premiums are paid less than 30 but more than 15 years, the State subsidy is calculated on a basis of 3.33 francs ($0.64) for each year of complete payments. If less than 15 annual payments were made, the State allows no pension subsidy whatsoever.

The pensionable age is 65, but pensions may be drawn at 55 years of age, subject to a proportionate reduction both in amount of pension and of State grant. In case of death, if ¾ of contributions were paid in and no pension had been received, children of the deceased may receive 50 francs ($9.65) a month for from 4 to 6 months; in case there are no children, the widow may receive this amount for 3 months; in case of divorce, when the exclusive fault of the husband was the ground for divorce, the wife may receive this sum.

All persons who, in 1910, were already 35 years of age must insure. If between 35 and 40 years old, the State grant of 60 francs ($11.58) is not diminished; if 46 years old, it is raised to 62 francs ($11.97). The grant increases 2 francs ($0.39) thereafter for every additional year of age at which insurance begins. In accordance with provisions of the Act of 1905 persons over 65 years of age receive such a pension, exceeding 100 francs ($19.30) but less than 240 francs ($46.32), as their needs may require. The Old Age Pension Act of 1907 includes invalidity, and the maximum invalidity pension is 360 francs ($69.48) per year.

In addition to compulsory insurance, a system of optional insurance has been extended to private persons receiving small income, employers engaged in small enterprises, peasant proprietors, independent workingmen, and to wage-earners whose annual income is more than 3,000 francs ($579) but less than 5,000 francs ($965). The voluntary annual contribution rate is from 9 ($1.74) to 18 ($3.47) francs.

The estimated number of persons to be insured under this Act is from 10 to 12 millions. The number of persons insured in 1913 was 7,854,132 and the income from the sale of stamps was 45,525,540 francs ($8,786,429).

On June 30, 1910, the total number of persons pensioned under this Act was 569,456, and on September 30, 1912, this total had increased to 640,532. It is estimated that about one-third of the total number of French working men were actually insured 18 months after this law became effective. The Act secures substantial incomes for many who could not be induced voluntarily to provide for their old age through private institutions, and it accomplishes this without inviting thriftlessness in the decade before receipt of a pension. Putting the pensionable age at 65 instead of at 70 brings a much heavier charge upon the French Treasury.

The amounts paid as old-age pensions are slightly higher than those paid in Germany, but under the German system certain additional benefits accrue to the insured.

Sources. — Journal Officiel, April 6, 1910, *cited by* R. F. Foerster in Article entitled "The French Old Age Insurance Law of 1910," *in* Quarterly Journal of Economics, v. 24, no. 4, Aug. 1910; I. M. Rubinow, Social Insurance, 1913; France Ministry of Labor, Old Age Pensions, Librairie Berger-Levrault, 1915.

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Sweden. The Swedish old-age insurance law of 1913 is more comprehensive than that of either Germany or France. The French and German systems are practically confined to persons gainfully employed, while the Swedish law applies to the whole adult population, including married women.

Every Swedish man or woman from the sixteenth to the sixty-sixth year, inclusive, pays an annual tax, or premium, of 3 crowns ($0.80). For incomes over 500 crowns ($134) a surtax is imposed, ranging up to 10 crowns ($2.68) for incomes over 1,200 crowns ($322) per annum. Additional voluntary payments may be made, not to exceed 30 crowns ($8.04) per year in all. Members (and their wives) of the military, naval, and civil service, who are otherwise provided for, and permanently disabled persons, are exempt.

If a pensioner receives poor relief, then his pension must be paid in part or in whole to the public charity organisation in order to reimburse it to the amount of the relief given to such pensioner. If institutional care is given, the institution or hospital may claim the pension to reimburse itself to the amount charged for such care of a pensioner. If a pensioner is a convict, or imprisoned for more than one month, his pension is withheld during that time; his dependents may, however, claim it for their support. Habitual drunkenness and voluntary idleness are disqualifications. Moreover, a pension reverts to the general insurance fund if it is not claimed within one year after it becomes due.

An old-age pension is payable, without respect to incapacity, from the sixty-seventh year. An invalidity pension is payable at any age in case of permanent disability. The annual amount of the pension is 30 per cent for men, and 24 per cent for women, of the whole amount that has been paid in by the beneficiary. In addition, the government grants a subsidy of 150 crowns ($40.20) per annum for men and 140 crowns ($37.52) for women whose whole annual income does not exceed 50 crowns ($13.40). This subsidy is reduced by one-half of the pensioner's income over 50 crowns ($13.40), and ceases altogether when the income reaches 300 crowns ($80.40) for a man or 280 crowns ($75.04) for a woman.

It will be seen that for the lower wage classes the government subsidy will be the chief component of the pension. For a generation to come, the government subsidy will be nearly the sole constituent of all pensions. At least thirty years must elapse before the insurance annuity will amount to any considerable sum.

In 1914 the number of pensions granted was 33,138 and the total amount paid was 1,875,457 crowns ($502,622), or 56.6 crowns ($15.17) per capita. Records further show that pensions were granted to 10,565 men, totaling 623,120 crowns ($166,996), or 58.98 crowns ($15.81) per capita; and to 22,573 women to the amount of 1,252,336 crowns ($335,626), or 55.48 crowns ($14.87) per capita. The total number of persons insured under the Act in 1914 was 3,225,700. They contributed a total of 14,571,000 crowns ($3,905,028). The number of voluntary cases insured in 1914 was 628.

Sources. — Svensk Farfattningssamling, nr. 120, Lag om allmän pension forsäkring (Universal Old Age Pension Law) June 30, 1913; Reichsarbeitsblatt, 1913 and 1916.

Austro-Hungary. The Austro-Hungary compulsory old-age insurance law of 1906, in force since January 1, 1909, is restricted to salaried employees, and does not, therefore, make general provision for the aged.

In the Austrian mining industry operated by the State, a compulsory old-age pension fund was established as early as 1854, and the State, as employer, pays one-half of the contributions.

Sources. — I. M. Rubinow, Social Insurance, New York, 1913; Statistisches Jahrbuch für das deutsche Reich, 1914.

Russia. In Russia no general provision is made for invalidity and old-age insurance, but in 1881 an Act was passed which provided for compulsory old-age insurance of employees in the government mines. Old-age insurance systems, established as early as 1858 by private railroads, were made compulsory in 1888 for such railroads, and in 1894 for State railroads.

In 1914 the government paid 117,994 roubles ($60,694) for pensions, which is an increase of 1,824 roubles ($939) over the amount for the preceding year.

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Sources. — Monatsblätter für Arbeiterversicherung, 1913, *cited in* Reichsarbeitsblatt, Bd. XI, no. 8, August, 1913; I. M. Rubinow, Social Insurance, 1913; The Times' Book of Russia, 1916.

Italy. The Italian National Institution for the Insurance of Workers against Invalidity and Old Age dates from 1898 and is modeled rather closely upon the French National Retirement Fund. In 1899, a law was passed providing that employees in the tobacco industry should be insured in this Institution. In 1904, a bill for uniform insurance was introduced and became law, and in 1905, this law was extended to employees of government engraving and printing offices, and in the same year to employees of the government salt works. In 1908 the compulsory pension system was extended to include government railway employees; in 1910 to include persons engaged in the shipping industry, and in 1913 to include sailors.

The pensionable age is 60 years for men, and 55 years for women. The monthly contribution from the wage of an employee is 2 lire ($0.39) for men, 1 lira ($0.193) for women. The smallest pension granted is 480 lire ($92.64) for men, 300 lire ($57.90) for women. The total annual subsidy of the State and the Institution given in every case is 34 lire ($6.56) for men, 22 lire ($4.25) for women.

Sources. — Report U. S. Commissioner of Labor, Washington, 1909, v. II; I. M. Rubinow, Social Insurance, 1913; Statistisches Jahrbuch für das deutsche Reich, 1914.

Roumania. In 1912, compulsory old-age and invalidity insurance was established by law, but there is no evidence at hand to the effect that the system has yet become operative. The act appears to be modelled upon both the German and the French acts. Under this act, invalidity is defined as inability to earn one-third of normal wages, and in this respect the act follows the German precedent. The pensionable age is 65 years. The French method of uniform weekly contributions for all classes of insured persons was adopted. The weekly rate is 45 bani ($0.87) for the first 10 years from the date the act becomes effective, and employer, employee, and the State contribute equally. The employer is responsible for the worker's share, which he may deduct from the wages. The normal old-age pension granted is 150 lei ($28.95), and in order to receive it, contributions must have been paid altogether for at least 1,200 weeks. The invalidity pension is increased by 10 bani ($0.193) for every weekly contribution exceeding 200 contributions. It is paid to any insured person after he has been ill for 16 consecutive weeks. The number of persons insurable in 1913 has been estimated at 150,000.

Sources. — I. M. Rubinow, Social Insurance, 1913; Statistisches Jahrbuch für das deutsche Reich, 1914; Law of 1912, *cited in* Bulletin, International Labour Office, 1913, v. VIII, No. 2.

Netherlands. An act passed in 1913 provided that old-age and invalidity insurance should be compulsory for all "workers" (with certain exceptions) earning less than 1,200 florins ($482) per year. Those insured under the act are entitled to a pension on attaining the age of 70, or earlier, if incapacitated, incapacity being defined as inability to earn one-third of normal wage. Surviving children of insured persons also receive annuities until they reach the age of 13 years. In order to be eligible, a pensioner must be needy and deserving, and must not have received public charity. Persons convicted of crimes, drunkards, and those who lead a dissolute life are disqualified. Continuous residence of at least 20 years and continuous citizenship of at least 5 years are necessary qualifications.

Insured persons are grouped in five wage classes, determined by total annual earnings as follows:

First class,	less than 240 florins ($96.48)
Second class,	240 to 400 florins ($160.80)
Third class,	400 to 600 florins ($241.20)
Fourth class,	600 to 900 florins ($361.80)
Fifth class,	900 florins and over

Military conscripts serving with the colors are assigned to the second class and their contributions are paid by the State. The weekly contributions for the respective classes are 20 cent. ($0.08); 24 cent. ($0.096); 32 cent. ($0.129); 40 cent. ($0.161); and 48 cent. ($0.193).

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Contributions are payable generally by the employers who may deduct from the wages of each employee a portion of the contribution paid in his behalf, the proportion varying according to the wage class of the employee. Contributions are paid by means of stamps affixed to cards, or in cash to the Local Labor Council.

The amount of the pension, whether on account of old age or invalidity, is computed as follows: a sum described as the "basis" of the pension is first determined by multiplying the aggregate amount of the contributions paid by 325; the product is then divided by the number of weeks during which the insurance has continued. The number of weeks during which invalid pension has been paid, and the premiums paid in respect of such weeks, are not taken into account in making such computation. The "basis" of the pension is then increased by a sum equal to 14 per cent of the total amount of premiums paid, but this sum must in no case be less than a fifth of the "basis." In accordance with this formula an insured person who has paid 48 weekly contributions each year from the age of 20 to the age of 70, and whose wages were $5 a week up to the age of 25, $6 a week up to the age of 30, and $7 a week thereafter would be entitled to a pension of about $2.30 a week at the age of 70. In the event of his becoming incapacitated at the age of 30, he would from that time onward receive about $1.25 a week. Should such incapacity not occur until his 40th year, he would receive about $1.50 a week, and if it did not occur until his 50th year, he would receive about $1.80 a week.

Medical or surgical treatment at home or in a hospital may be provided when it is believed that an insured person might, without such treatment, become permanently incapacitated. If such person has 150 weekly contributions to his credit, provision may be made for the payment on behalf of his children under 13 of two-thirds of the estimated amount of the invalidity pension to which he may be entitled.

Provision is also made for the granting of invalidity and old-age pensions. To persons who voluntarily insure, contributions of two florins ($0.80) may be paid whenever the insured desires, but no more than 80 contributions are to be taken into account for any year. The amount of the pension is to be 1.5 per cent of each contribution for each half-year which shall have elapsed between the dates of the payment of the contribution, and the receipt of the pension, excluding, however, years during the major portion of which invalidity pension was received.

An annual State subsidy of 10,000,000 florins ($4,020,000) is to be paid for a period of 75 years. Before 1914 the government paid the districts a subsidy of 50 florins ($20.10) per pension. The estimated cost for 1914 for invalidity pensions was 9,500,000 florins ($3,819,000), and for old-age pensions 4,750,000 florins ($1,909,500), a total of 14,250,000 florins ($5,728,500) for all pensions paid in 1914. Pensions are paid through the State Insurance Bank and Local Labor Councils.

Sources. — Maandschrift van het Centraal Bureau voor de Statistiek, 1914; British Board of Trade Labour Gazette, July, 1914; Staatsblad, van het Koninkrijk der Nederlanden, 1913, Nos. 205, 272, 281.

Greece. A compulsory invalidity and old-age insurance act was passed in 1907. It is restricted to Greek sailors and the cost is borne in equal shares by the insured, the employer, and the government. No statistics as to the operation of this act are available.

Source. — Statistisches Jahrbuch für das deutsche Reich, 1914.

Luxemburg. Compulsory invalidity and old-age insurance laws were passed in 1911 and 1912. All persons having an annual income of not less than 3,000 marks ($715) must insure. The pensionable age is 68 years. Invalidity is defined as inability to earn two-thirds of normal wage. Institutional care to prevent permanent invalidity and support of dependents may be granted. In the event of death before a pension becomes due, death benefits may be paid to the widow or the children of a pensioner. The contributions are at the rate of 2.1 per cent of the wage earned, and are paid in equal shares by the insured and the employer. The State pays a subsidy of 48 marks ($11.43) for every insured man and 38.40 marks ($9.15) for every insured woman. Compulsory insurance may be augmented by voluntary insurance for persons receiving an annual income not exceeding 3,600 marks ($858).

Source. — Statistisches Jahrbuch für das deutsche Reich, 1914.

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Iceland. Under a law dated July 11, 1890, a compulsory system of old-age and invalidity insurance was established. All servants between the ages of 20 and 60, all day laborers, and persons working with their parents must annually contribute to this fund 1 krone ($0.27) for men, and 30 øre ($0.08) for women. The male head of each household must pay this contribution for every person who resided with him during the year, but he may deduct it from the wages of his employees. For non-payment of these contributions, property may be attached. The only persons exempt from paying contributions are those without means who are responsible for maintaining one or more dependents who are unable to provide for themselves; those unable to earn wages on account of sickness or other causes; and those who have provided for their old age by purchase of an annuity of at least 150 kroner ($40.20).

Pensions are granted to persons over 60 years of age who have received no poor relief during a prior period of ten years. The minimum pension is 20 kroner ($5.36) and the maximum pension granted may not exceed 200 kroner ($53.60).

For the first 10 years after the establishment of these relief funds all contributions plus accrued interest must be added to the funds. In later years one-half of such contributions plus interest is added to the funds, while the remainder is distributed in pensions.

Funds are administered in cities by the magistrates, in rural communities by the parish council, and these officials may set aside, as their salaries, 4 per cent of all contributions levied. They must also elect two persons who audit the annual balance sheet of the respective funds.

Source. — Lov om Understottelseskasser for Almuesfolk, *cited in* Zacher, Die Arbeiterversicherung im Auslande, 1898.

NON-CONTRIBUTORY OLD-AGE PENSIONS.

Although non-contributory old-age pension systems have been adopted in only a very few countries, the operation of these systems is being considered with a great deal of interest, particularly since the passage, in 1908, of the act which provided for the payment in the United Kingdom of old-age pensions on the non-contributory plan. This pension scheme, while not yet fully perfected, appears to have worked surprisingly well, and it has, therefore, been discussed at some length. Similar systems, previously adopted in Denmark, New Zealand, Australia, and New South Wales, have also been considered.

This form of old-age relief is justified by its advocates on the ground that all persons who have, for a considerable portion of their adult lives, engaged in honorable labor are entitled to freedom from anxiety on account of their physical needs during their declining years. Accordingly, in all such systems deserving persons only, who are without property or sufficient income to provide for immediate necessities, are eligible to receive pensions.

United Kingdom. The British old-age pension act was passed in 1908 and revised in 1911, and was the result of earnest consideration for at least twenty-five years during which five parliamentary commissions had investigated the subject and many different plans had been proposed. The non-contributory plan was adopted because that was the plan favored by the labor party and because there was urgent need of immediate relief. About one-fifth of the whole population of the United Kingdom above the seventieth year were actually paupers when the act was passed, and it was recognised that no plan of contributory insurance could be of any avail to those who were already aged. Both men and women, married or single, over seventy years of age, of British nationality, who for 12 years out of the last 20 years before consideration of their claims have been resident in the United Kingdom, and whose annual income does not exceed £31 10s. ($153) are eligible for pensions. The "character" disqualifications are:

(1) Habitual refusal to work according to ability, opportunity and need.

(2) Imprisonment for crime during the preceding ten years, without the option of a fine. Such imprisonment for six weeks disqualifies for two years after release, imprisonment for a longer period disqualifies for ten years.

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(3) Conviction under the inebriates act, which disqualifies for six months unless otherwise directed by the judge. Habitual inebriety may disqualify for ten years.

(4) Persons under detention as lunatics, and inmates of institutions where board and lodging amounts to an income above the pensionable limit are disqualified.

More important in actual effect than any of the foregoing is the disqualification of those in receipt of poor relief, except medical aid, after the granting of a pension. This may be termed a "thrift" test since it assumes that a pensioner should have some means of his own to supplement his pension. Under the original act the receipt of poor relief by any dependent of a pensioner was a disqualification, but the amendment of 1911 restricts the disqualification to the pensioner himself. A pension may be revoked for any cause which would disqualify a new applicant.

The amount of the pension varies with the pensioner's income, being 5s. ($1.22) per week for incomes of not more than £21 ($102) and graded in such a way that the total income (including the pension) shall not exceed £34 ($165). The income from any property is reckoned at 5 per cent per annum of its net capital value, irrespective of the actual income therefrom. In the case of a married couple, the income of each is taken to be one-half of the total income of both. Nearly all pensions (about 94 per cent in 1912) are for the full amount of 5s. ($1.22) per week.

The normal pension of £13 (about $63 a year) is low when judged by an American standard. Still it is notably higher than the average German old-age or invalidity pension ($40 and $48 respectively). Moreover an aged couple in Great Britain receives two pensions, whereas in Germany such couple receives but a single pension. Thus the total annuity of a married couple is nearly three times as large in the United Kingdom as in Germany.

At the close of the fiscal year, 1914–1915, the number of pensioners was 987,238, having increased from 647,494 in 1909, and from the outset the number was much greater than had been anticipated. The actual enrollment in the first three months exceeded the estimates for the second year by 250,000. This great discrepancy between the estimated number and the actual number shows that the pension system uncovered much unsuspected poverty among the aged. It was supposed that only one-third of the population 70 years of age and over could qualify for a pension, but as a matter of fact 624 out of each 1,000 persons of pensionable age in England and Wales were on the pension rolls, according to the Census of 1911. This means that only two out of every five aged persons were in receipt of an annual income of at least $153, from earnings or savings. For the United Kingdom as a whole, the proportion was 637 per 1,000.

The great increase (over 200,000) in the pension roll between 1910 and 1911 was due to the removal of an important disqualification. As the act first stood, the receipt of poor relief at any time after January 1, 1908, was a bar to the granting of a pension. The removal of this disqualification at the close of 1910 added 160,000 names to the pension roll. In other words, 160,000 persons who were 68 years of age or over in 1908, received poor relief before attaining the age of 70 years. This is rather conclusive evidence that the pensionable age is altogether too high.

The cost of pensions has increased correspondingly. Thus during the fiscal year 1908–1909, the expenditure was £8,077,110, 12s. ($39,307,259), having increased to £12,315,061, 4s. ($59,931,245) for the fiscal year, 1912–1913.

The present "character" and "thrift" tests are less severe than under the original act; nevertheless, 12,941 persons were disqualified under these tests during 1913. Of this number, 10,092 were disqualified because of receipt of poor relief after the granting of a pension. In some cases pensioners preferred to be maintained in the workhouse to subsisting upon such a small pension as $1.22 per week. In other cases, there was a deliberate attempt to secure both forms of relief. By means of "character" and "thrift" tests about one person in every thirty applicants is disqualified. One of the arguments advanced by advocates of an old-age pension was that the cost would, to a large extent, be offset by the reduction in poor relief, and this, in a measure, has been found to result. The number of workhouse (almshouse) inmates 70 years of age and over in England and Wales has, it is true, greatly decreased, but, as such persons are, for the most part, physically or mentally unfit to maintain an independent life, even with the aid of a pension, a better test is afforded by the number of persons seventy years

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and over who received "out-relief." The decrease in the number of actual paupers in England and Wales since 1910 has been 70.9 per cent. However, the old-age pension system, while resulting in a decreased expenditure on account of almshouse and out-relief, as such, has on the other hand added greatly to the budget of England and Wales, and it has been estimated that old-age pensions have cost at least four times as much as would have been expended under the former systems of poor relief.

The maximum pension of £13 ($63 per annum) is less than one-half the cost of maintaining a workhouse inmate and less than twice the cost of giving "out-relief" to the same individual. The great increase in the cost of old-age pensions, over poor relief, is, accordingly, due to increase in the number of persons relieved. The pension roll of England and Wales on March 31, 1915, comprised 691,405 names, of whom 3,413 received institutional care, and 5,897 received outdoor relief, both of non-disqualifying character. The old-age pension system, therefore, in part replaces poor relief, in part supplants private charity, and in part supplements incomes too small for proper maintenance.

The principal defects of the old-age pension system are as follows: (1) The maximum pension of £13 ($63.26) a year is too small and the income limit for eligibility of £31 10s. ($153) a year is too low, in view of the fact that the cost of living has risen considerably since 1906; (2) the pensionable age of 70 is too high, for the reason that a large proportion of those in need of a pension become incapable of earning a living long before reaching 70 years of age; consequently an old-age pension ought to be granted as soon as one becomes unable to earn a living, at whatever age, such cases being but partially provided for by disablement benefits under the Insurance Act. Furthermore, disablement benefits are received only by insured persons, who constitute less than 50 per cent of the population over 16 years of age and who receive an income of less than £160 ($779).

The old-age pension act is administered by the Local Government Board under which are local pension committees for boroughs and urban districts and paid district pension officers. These authorities have worked together very conscientiously, and have displayed tact and sympathy. The cost of administration for 1913 was about 9s. 8d. ($2.35) for every £100 ($487) of pensions granted, or less than 5 cents for every dollar distributed.

Although it has been found necessary to amend the old-age pension act from time to time, and although the system has yet to be perfected in certain details, it has operated quite satisfactorily even during the short experimental period of less than eight years. The system has proved to be a source of real blessing to the aged and deserving poor, not only because of its provision for material needs late in life, but because it removes the cause of great anxiety with respect to their physical needs during advancing years.

Sources. — 7 Edward VII, c. 40; 1 & 2 George V, c. 16; Annual Reports of Local Government Boards, 1913–15; Report on Old Age Pensioners and Aged Paupers (England and Wales) (Cd.7015); Fourth Report of Commissioner of Customs and Excise — 1913 (Cd. 6993); British Statistical Abstracts; British Board of Trade Labour Gazette, 1913; The Labour Yearbook, 1916; H. J. Hoare, Old Age Pensions, 1915.

Denmark. The oldest of the non-contributory pension systems is that of Denmark, which dates from 1891. The pension age (60 years) is the lowest fixed by any country. The income and property qualification is rather vague, namely: Inability to provide one's self and dependents with necessary subsistence. The required residence is only 10 years. The "character" and "thrift" tests, on the other hand, are unusually rigorous. No one shall receive a pension who has ever been convicted of crime, unless subsequently restored to civil rights, or who has received any poor relief, except medical aid, for one's self or dependents, during the five years next preceding the application for a pension, or whose own poverty has been due to extravagance or disorderly habits.

The amount of the pension is not determined by fixed rules but varies with individual circumstances, and must be sufficient for support, when supplemented by the pensioner's other income. In computing the pensioner's means no account is taken of any income, ownership of dwelling, etc., amounting to an annual income of less than 100 kroner ($26.80). In contrast with Great Britain, New Zealand, New South Wales and Australia, where man and wife receive separate pensions, the family in Denmark is treated as a unit, and the pension granted to the head of a family is for the support of himself and his dependents. The average pension in-

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creased from $27.23 in 1895 to $42.89 in 1907, this increase having no doubt been made in consideration of the increasing cost of the necessities of life.

There is much variation in the amounts of pensions granted to individuals, being larger for heads of families than for individuals, and higher in Copenhagen than elsewhere. Of single men only 37.5 per cent, and of single women only 33.4 per cent in the country as a whole, received more than 200 kroner ($54) during the fiscal year 1911–12. The total number of beneficiaries during that period was 79,340. Of this number 16,710, or 21 per cent, were heads of families; 20,085, or 25 per cent, were dependents (mostly wives); 9,356, or 12 per cent, were single men; and 33,034, or 42 per cent, were single women. As in other countries the number of pensioners has increased faster than the population, having been 60,066 in 1902 and 79,340 in 1911.

This increase is partly due to the removal of disqualifications by successive amendments to the original act and partly to a greater familiarity with the provisions of the act, but more particularly to the great desire on the part of the aged to avoid applying for poor relief between the fifty-fifth and the sixtieth year, so that they may be eligible to receive a pension.

Since the inauguration of the system the aggregate cost has increased enormously. In 1912–13 the country spent 13,100,000 kroner ($3,510,800) as compared with 2,600,000 kroner ($696,800) in 1892. In 1913–14 the total net disbursement was 14,013,954 kroner ($3,755,740), of which the State paid 7,054,354 kroner ($1,890,567), the cost being about equally divided between the national government and the communes.

As in New Zealand, pensioners who are unable to care for themselves are cared for in special homes, some of which are in groups of detached cottages, others are single large buildings. The inmates are under no special restraint and much concern for their comfort is shown. In 1911–12, three per cent of the total number of pensioners were cared for in these homes at a cost of 1,059,834 kroner ($284,036).

Old-age pensions are administered primarily by the municipal and communal authorities, under whom serve paid and well-trained inspectors. The Minister of the Interior has general supervision and to him are referred appeals from decisions of the local authorities. As the authority to fix the amount of pensions rests with the local officials the amount of pensions granted, particularly in the rural communes, is kept rather low from motives of economy, resulting in some dissatisfaction and provision for appealing from such decisions is therefore made.

Sources. — Annual Report of the U. S. Commissioner of Labor, 1909, Vol. I, pp. 623–649; Statistisk Aarbog, (Statistical Yearbook) 1912 and 1915; Statistiske Meddelelser, København 1914, Alderdomsunderstøttelsen, 1902–12, ch. V.

New Zealand. The New Zealand old-age pension system was established in 1898. The Act was amended in 1905 so as to provide that investigations of claims might be heard in private. By amendments in 1912 and 1913 the acts relative to widows' and military pensions were merged with the old-age pension act.

All persons, 65 years of age and over, except aliens and Maoris, who have been citizens for at least three years, and who have resided in New Zealand for at least 25 years (four years absence being allowed), whose property does not exceed £260 ($1,265), and whose income does not exceed £60 ($292) per year, or whose joint income in the case of a married couple does not exceed £90 ($438), are eligible to receive a pension, provided that the applicant has led a sober and reputable life for at least one year next preceding application, has not been imprisoned for as much as four months within five years, or for as much as five years within 25 years, and has not deserted his (or her) family within 12 years.

The amount of the pension is £26 ($127) per annum, less £1 ($4.87) for every £1 of income over £34 ($165) and for every £10 ($48.67) of net property above £50 ($243). In the case of a married couple it is estimated jointly and equally divided. Life insurance is not counted as property and income from property is disregarded (being offset by the property limit). A pensioner may retain a homestead to the value of £650 ($3,163), which shall revert to the colony at the death of the pensioner. Parents having two or more children may, in case of need, receive a pension, — in the case of the father at the age of 60 years, and in the case of the mother at the age of 55 years. Such pension to parents is the same in amount as an old-age pension, but may be increased by not more than £13 ($63) per year if required by circumstances. Pensioners

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who require institutional care, or who are unable to maintain homes for themselves, may be maintained in suitable homes or hospitals. The cost of maintenance in such cases is deducted from the pension.

The number of old-age pensioners at the close of the fiscal year ending in 1913 was 16,509, constituting 36 per cent of the entire population qualified by age and residence for receipt of a pension. The great majority (14,017) were receiving the "normal" pension of $127. Only 32 were receiving parents' pensions above the normal amount. The total amount of pensions paid during the fiscal year was £415,761 ($2,023,301) or 7s. 10d. ($1.91) per capita. On March 31, 1915, there were in force 19,352 pensions which represented an amount of £475,970 ($2,316,308), while the estimated population, exclusive of Maoris, was 1,095,994 on December 31, 1914. The per capita cost was therefore 8s. 8d. ($2.11) in 1914.

The New Zealand old-age pension law is administered by a Commissioner of Pensions and by district Registrars, most of whom are court clerks. Pensions are paid monthly, in advance, through the post office.

It must be said that the pension system has not resulted in materially reducing expenditures in the form of public charitable aid, but it has tended to decrease voluntary charitable contributions, for the reason that tax payers who have contributed toward the pension funds through taxation appear to be disposed to reduce their voluntary contributions to public charities.

Sources. — 62 Victoria, No. 14; 64 Victoria, No. 28; 8 Edward VII, No. 245; 1 George V, No. 45; Annual Report of the Pensions Department, 1913; New Zealand Official Year Book, 1913–1914; Le Rossignol and Stewart, State Socialism in New Zealand, 1910; Statistics of New Zealand, Pt. 1, 1914.

Australia. The Australian invalid and old-age pension law became operative July 1, 1909. Prior thereto the separate States of New South Wales, Victoria and Queensland had established pension systems of their own, so that the Commonwealth Fund took over some 60,000 pensioners in December, 1909, when the separate systems were combined in a single system.

The Australian law is very similar to that of New Zealand. The pension age is fixed at 65 years for men and at 60 years for women. The residence, race, citizenship and character qualifications are similar to those of New Zealand. The property limit is £310 ($1,509).

An invalidity pension is payable to any person above the age of 16 who is permanently incapacitated for work provided that he (or she) shall have resided in Australia for at least five years, is not receiving an old-age pension, has no claim upon an employer for accident compensation, has become permanently incapacitated while in Australia, did not purposely produce the incapacity, and does not have property or income in excess of the old-age pension limits.

The annual pension is such as the Commissioner (or Deputy Commissioner) of Pensions in each case "deems reasonable and sufficient", but must not exceed £26 ($127) per annum nor be such as to bring the pensioner's total income above £52 ($253). The "normal" pension of £26 ($127) is subject to a deduction of £1 ($4.87) for every £10 ($48.67) of net property above £50 ($243) exclusive of a homestead, or above £100 ($487) inclusive of a homestead.

The number of old-age pensioners has increased out of all proportion to the increase of population, the percentages of increase from 1910 to 1913 having been 26.65 for pensioners and 9.95 for population. This is due in part to an increasing proportion of old people (immigration of young and middle-aged persons having decreased in proportion to the total population), and in part to a lowering of the age requirement for women from 65 to 60 years at the close of 1910. There was also a small increase attributable to a wider knowledge of the pension plan and to the dispelling of the impression that the receipt of an old-age pension implies pauperism.

Invalidity pensions are also granted in Australia, and, as respects aged beneficiaries, they are virtually (as in Germany) old-age pensions, and should be considered in this connection. On July 30, 1913, the number of old-age pensions in force was 82,943, and the number of invalidity pensions was 13,739. The total amount paid in pensions during the fiscal year ending June 30, 1913, was £2,289,048 ($11,139,652) representing a per capita amount distributed fortnightly to these pensioners of 19s. 6d. ($4.74). The cost of administration was about 2 per cent of the total amount distributed.

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The Australian act is administered by a Commissioner of Pensions with the assistance of a deputy in each State and of local Registrars.

Sources. — Invalidity and Old Age Pensions Act, 1908, No. 17 and 1909, Nos. 3 and 21; Old Age and Invalid Pension Report to the Commonwealth of Australia, 1913; Official Yearbook of Australia, 1914.

New South Wales. The Old-Age Pension Act became operative on August 1, 1901, but virtually became inoperative on July 1, 1909, when that portion of the Commonwealth Invalidity and Old Age Pension Act relating to old-age pensions for men went into effect. An act relative to women, 60 years of age and over, became operative on December 15, 1910.

The conditions governing the payment of a pension vary slightly from those established under the State act. The pensionable age is 60 years for women and for permanently incapacitated men and 65 years for other men. Pensioners must have been in residence for at least 20 years except that absences aggregating one-tenth of total period of residence are not considered. Aliens and aborigines are disqualified. The maximum amount of a pension is £26 ($127), but income and pension combined must not exceed £52 ($253); possession of a home and gifts or allowances are not included in income.

On June 30, 1914, the number of persons receiving old-age pensions was 32,165, of whom 14,217 were men and 17,948 were women. The per capita fortnightly pension was 19s. 5d. ($4.72). During the fiscal year ending in 1914 the Commonwealth paid for invalidity and old-age pensions a total of £2,579,265 ($12,551,993), the administrative cost having been £46,946 ($228,463), and for the asylum care of pensioners a total of £14,236 ($69,279). The number of old-age pensions per 1,000 of population increased from 17.3 per cent in 1913 to 17.5 per cent in 1914, while there was an increase in 1914 of £290,217 ($1,412,341) in the total amount paid for pensions and an increase of £2,423 ($11,792) in the cost of administration.

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BULLETIN No. 6

THE INITIATIVE AND REFERENDUM

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NOTE.

Since this Bulletin was prepared, Massachusetts has adopted a constitutional amendment providing for the initiative and referendum for both constitutional amendments and statutes, but no attempt has been made to revise the statements herein made because of this action.

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THE INITIATIVE AND REFERENDUM.

During the past twenty years more than a score of the States of the Union have been making trial of Direct Legislation — the enacting, annulling or ratifying of laws by the vote of the electors — under forms of the Initiative and Referendum.

DEFINITIONS.

The Initiative is a device by which any person or group of persons may draft a statute, or constitutional amendment, and, by securing to a petition the signatures of the requisite number of qualified voters, may require the State officials (with or without action upon it by the Legislature) to submit the measure to the electorate at a general or special election; if it is approved by the required majority, it becomes a law.

The Referendum is a device whereby a measure, already drafted and approved by a representative Legislature or constitutional convention, is held in suspense until it shall have been submitted to the voters at a general or special election, there to be ratified or rejected by majority vote.

The intent of the Initiative is positive, — to secure the enactment of some measure which the Legislature has ignored or failed to pass; the intent of most forms of the referendum, on the other hand, is negative, — to superpose a popular veto upon an enactment already passed by the Legislature.

Forms of the Initiative.

1. Under the Direct Initiative, on the filing of a petition signed by the requisite number of qualified voters, the proposed constitutional amendment or draft of a law, without any action having been taken upon it by the representative Legislature, must be placed upon the ballot at the next election.

2. Under the Indirect Initiative, the filing of a petition with the requisite number of signatures necessitates the measure's being first reported to the Legislature, which may enact it forthwith, or transmit it to the electors, or accompany it by a substitute measure, framed by the Legislature.

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3. The Advisory Initiative is a name sometimes applied to the method of promoting legislation upon a given question by submitting it to the voters, and requiring that there be transmitted to the members of the Legislature the result of these votings, as a more or less weighty expression of public opinion upon the matter under consideration. (See Bulletin No. 7, The Public Opinion Law in Massachusetts.)

Forms of the Referendum.

The Referendum may be either Compulsory or Optional. The Compulsory Referendum finds its most important illustration in the case of American State Constitutions and amendments thereto. In nearly all of the States it is required that these be subjected for ratification to a popular vote, before they can become law.

Under the Optional Referendum, the popular vote upon the measure in question is brought about by no requirement of the fundamental law, but by the Legislature's general or special grant of this freedom of choice. The following forms of Referendum have come into wide use in American States:

1. The Legislature may refer a special question to the voters for their decision. Thus, five times since the adoption of the present Constitution, the General Court referred to the voters the question of the expediency of holding a constitutional convention, and in 1895 the voters were called upon to express their opinion as to the expediency of granting municipal suffrage to women.

2. The Legislature may refer to the people for their rejection or approval at the polls any act or resolve of the Legislature, or any part thereof. (This form of Referendum was expressly authorized for the Massachusetts General Court by the forty-second Article of Amendment, ratified November 4, 1913.)

3. The Legislature may grant to all local political units of the State the privilege of determining by popular vote the form in which the police power as to certain matters shall be exercised under general law. Thus "local option" each year decides the method by which the liquor traffic shall be regulated in the cities and towns of Massachusetts.

4. By general law, the Legislature may authorize the local unit to adopt for itself certain regulations as to the public

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employment of labor (*e.g.*, in regard to hours, wages, pensions, etc.).

5. Under general law, the Legislature may accord to the individual town or city a considerable range of choice as to its own form of government. Under the law of 1915, the voters of a Massachusetts city by their own choice at the polls may secure for themselves any one of the four standard forms of city charter, without going to the Legislature for a special enactment.

6. When a Legislature passes an act granting a charter to a given city, or amending a charter, or enacting other legislation pertaining to a given municipality, its going into effect is usually made conditional upon its being accepted by a majority vote in the city to which it is to apply.

7. The Statutory Referendum has come into prominence in American States during the last twenty years, and it is to this form that the word "Referendum" is now ordinarily applied. Under this Statutory Referendum, upon petition of a certain number of qualified voters, any act of the Legislature (with certain exceptions) must be referred to the electorate to be approved or annulled by majority vote at the polls.

THE DEVELOPMENT OF THE INITIATIVE AND REFERENDUM.

The Initiative and Referendum are often spoken of as novel exotics, imported from Switzerland and first finding American soil congenial for their growth in the States of the Far West.

Direct Legislation, prevalent in the Swiss cantons for many centuries in the primitive *landsgemeinde*, underwent developments in the last quarter of the nineteenth century which attracted keen interest in all countries of democratic ideals. The Compulsory Referendum was made applicable to all changes in a Swiss constitution, whether federal or cantonal. In some form or other the change must be submitted to a popular vote. To other laws the Optional Referendum is applied by the Confederation and by about half the cantons; about as many cantons use the Compulsory Referendum; in only one are these laws subjected to no Referendum at all.

In two cantons the Initiative was introduced as early as the middle of the past century; it was taken up so rapidly that by 1900 it was to be found in every canton but one. In 1891 it

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was made applicable to amendments to the Federal Constitution, but it does not apply to the Confederation's ordinary laws.[1]

South Dakota, 1898, was the first American State to adopt a constitutional amendment providing for the introduction of the Initiative and Referendum on the Swiss model, and the next five States to follow her example were States of the Far West.

Yet two hundred and fifty years before South Dakota adopted this Swiss "novelty," the Puritans of the Massachusetts Bay Colony were experimenting with simple forms of the Initiative and Referendum, and almost every present-day variety of these devices finds interesting analogue if not distinct precedent in the practice of the founders of this Commonwealth.

Thus, in 1635, on demand of the Deputies, the General Court ordered that certain men should be appointed "to frame a body of grounds of laws in resemblance to a Magna Charta, which being allowed by some of the ministers and the General Court, should be received for fundamental laws." (Winthrop, I, 191.) Two years later, alleging that the lack of written laws had led to "many doubts and much trouble," the General Court ordered that "the freemen of every town should assemble together in their several towns, and collect the heads of such necessary and fundamental laws as may be suitable." The "heads" so collected were to be delivered in writing to the Governor, and reduced to a "compendious abridgment to be presented to the General Court for confirmation or rejection." The records of Charlestown show that Mr. Jno. Harvard, with five others, was chosen, April 26, 1638, "to consider of some things tending towards a body of Lawes." In November, 1639, the General Court passed an order, instructing a joint committee of Magistrates and Deputies "to peruse all these models which have been or shall be further presented concerning a form of government and laws to be established," and to "draw the models up into one body" and "take order that the same shall be copied out and sent to the several towns, that the Elders of the churches and the freemen may consider of them against the next General Court." The records of the General Court of October 7, 1641, refer to "Capital Laws, to be transcribed and

[1] For the working of the Initiative and Referendum in Switzerland, see A. L. Lowell, *Public Opinion and Popular Government;* W. E. Rappard, in *Annals of American Academy of Political and Social Science*, September, 1912.

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sent to the several towns." Final action was taken by the General Court on December 10, 1641, when "the bodye of laws formerly sent forth among the Freemen was voted to stand in force." The Body of Liberties was not a mere collection of statutes; it partook of the nature of a bill of rights and a frame of government as well. From the inception of the work, the initiating suggestions of the freemen were sought; the "models" were sent to the several towns that the freemen might "consider of them against the next General Court"; the final draft of the "Capital Laws" was "sent forth among the Freemen", and the record of the General Court's last action in the matter sounds like little else than the proclamation of the result of that referendum.

Six years later (November 11, 1647), the General Court passed an act limiting the number of Deputies to one from each town; but on the same day suspended the act, "being desirous to know the mind of the country herein", and ordered that "a copy of this order shall be sent to the constable of every town who shall call the freemen together and acquaint them herewith that they may declare their minds herein." The records of the General Court for the following March contain this entry: "The most of the freemen desiring their former liberty of sending one or two deputies to the General Court, the former wonted liberty is continued and the former act repealed." [1]

The records afford many evidences that the referendum served as an influential factor in transforming the Company of Massachusetts Bay into the Commonwealth of Massachusetts Bay. Whenever the voters of Massachusetts have been free to express themselves on constitutional questions and the times have demanded it, the General Court has had recourse to a referendum. Instituted in 1639 as a means of finding out what kind of a "Body of grounds of laws in resemblance to a Magna Charta" the Freemen wished to have adopted in response to the demands they had made, it has often been appealed to, particularly in times of uncertainty and excitement, as in 1685, 1689, and 1776–1780. Accordingly, the Constitution of the

[1] The above paragraphs in regard to early Massachusetts experience with Direct Legislation consist of almost verbatim excerpts from *Referenda in Massachusetts, 1639–1912*, an unpublished paper by Dr. Edward M. Hartwell, Secretary of Statistics Department, Boston.

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Commonwealth since 1641, except during the Andros and Provincial periods, has embodied the "people's law" as evoked by referenda.

THE INTRODUCTION OF THE STATE-WIDE INITIATIVE AND REFERENDUM.

The following table shows the dates at which the several States adopted the Initiative and Referendum, and the popular vote for and against the constitution or amendment by which they were adopted. It should be noted that the constitutional amendments in Utah and Idaho and partly in North Dakota were not self-executing; their becoming effective was made dependent upon statutory action by the Legislatures. At the 1917 session the Utah Legislature enacted the requisite statute; the Idaho and North Dakota Legislatures have taken no action.

Progress and Status of the State-wide Initiative and Referendum.[1]

[Total 21 States, February, 1917.]

Date of Adoption.	State.	Popular Vote on Amendment.	
		For.	Against.
1898	South Dakota,	23,816	16,483
1900	Utah,	19,219	7,786
1902	Oregon,	62,024	5,668
1905	Nevada [referendum only],	4,393	792
1906	Montana,	36,374	6,616
1907	Oklahoma,	180,333	73,059
1908	Maine,	53,785	24,543
1908	Missouri,	177,615	147,290
1910	Arkansas,	91,367	39,111
1910	Colorado,	89,141	28,696
1911	Arizona,	12,187	3,822
1911	New Mexico (referendum only),	31,742	13,399
1911	California,	138,181	44,850
1912	Nebraska,	189,200	15,315
1912	Washington,	110,110	43,905
1912	Idaho,	43,658	13,490[2]
1912	Ohio,	312,692	231,312
1912	Nevada (adds initiative),	9,956	1,027
1913	Michigan,	219,388	152,038
1914	North Dakota,	48,783	19,964
1914	Mississippi,	19,118	8,718
1915	Maryland (referendum only),	51,880	24,659

[1] This table is reprinted from "The State-wide Initiative and Referendum," by Judson King. (64th Congress, 2d Session, Senate Document No. 736.)

[2] This vote was on the Referendum; the Initiative was adopted by a vote of 38,918 to 15,195.

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THE INITIATIVE.

Beginning with South Dakota, in 1898, the State-wide Initiative, in one form or another, has now been adopted in nineteen States. Under the Direct Initiative the proposed measure is submitted directly to the electors. Under the Indirect Initiative the measure goes first to the Legislature, but must be submitted to the electors unless enacted without change by the Legislature. Their form of Initiative, and the percentage or number of voters' signatures necessary to invoke it, are shown in the following table:

Year.	State.	Initiative on Statutes.	Initiative on Constitutional Amendments.
1898	South Dakota,	5 per cent, indirect.	None.
1900	Utah,[1]	5 per cent, indirect, 10 per cent, direct.	5 per cent, indirect, 10 per cent, direct.
1902	Oregon,	8 per cent, direct.	8 per cent, direct.
1906	Montana,	8 per cent, direct.	None.
1907	Oklahoma,	8 per cent, direct.	15 per cent, direct.
1908	Maine,	12,000, indirect.	None.
1908	Michigan,	(See 1913.)	20 per cent, indirect. (See 1913.)
1908	Missouri,	8 per cent, direct.[2]	8 per cent, direct.[2]
1910	Arkansas,	8 per cent, direct.	8 per cent, direct.
1910	Colorado,	8 per cent, direct.	8 per cent, direct.
1911	Arizona,	10 per cent, direct.	15 per cent, direct.
1911	California,	5 per cent, indirect, 8 per cent, direct.	8 per cent, direct.
1912	Idaho,	—[3] —	—[3] —
1912	Ohio,	3 per cent, indirect, 6 per cent, direct.	10 per cent, direct.
1912	Nebraska,	10 per cent, direct.	15 per cent, direct.
1912	Nevada,	10 per cent, indirect.	10 per cent, indirect.
1912	Washington,	10 per cent, direct and indirect.	None.
1913	Michigan,	8 per cent, indirect.	10 per cent, direct.
1914	Mississippi,	7,500, direct.	7,500, direct.
1914	North Dakota,	10 per cent, indirect.	25 per cent, indirect.

[1] The necessary legislation for carrying this provision into effect was not enacted until 1917.
[2] The maximum named in the Constitution. Five per cent has been adopted by statute.
[3] Details are to be supplied by the Legislature, which has taken no action.

The Initiative on Constitutional Amendments.

The Direct Initiative is now in use by ten States in application to constitutional amendments. When once the proposed amendment has been filed, backed by a petition containing the requisite number of signatures, it must be submitted to the voters at the polls for the final verdict. The number of signatures in all of the States is gauged as a percentage, usually of the "legal voters", — a higher percentage being required in

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most States in the case of amendments to the Constitution than in the case of ordinary statutes. Missouri requires but 5 per cent; Arkansas, California, Colorado and Oregon insist upon 8 per cent; Ohio and Michigan call for 10 per cent; while Arizona, Nebraska and Oklahoma exact 15 per cent. At the last general election in Massachusetts, 1916, the number of registered voters in the Commonwealth was 650,882, of whom 557,499 (or 85.5 per cent) voted for the candidates for Governor. If in Massachusetts the above percentages should be required in securing signatures upon Initiative petitions (reckoning the percentage upon the number of registered voters), the results would be as follows: 5 per cent, 32,544; 8 per cent, 52,070; 10 per cent, 65,088; 15 per cent, 97,632.

There is variety in the requirements as to the interval which must come between the filing of the petition and the date of the election at which the initiated amendment is to be voted upon, — the next regular general election, unless some special election is called by the Legislature (Arizona) or by the Governor (California). In Nevada the petition must have been filed not less than thirty days before a regular session of the Legislature. The other States allow a longer interval for deliberation. (California and Ohio, three months; Nebraska and Michigan, four months; and North Dakota, six months.)

For the adoption of an amendment thus initiated a majority of those voting thereon is all that is required by Arizona, Michigan, Nevada and Ohio. North Dakota and Oklahoma insist upon a majority of the votes cast at that election.

Nevada and North Dakota make use of the Indirect Initiative in the case of constitutional amendments. In Nevada the procedure does not differ materially from that applied to ordinary statutes. In North Dakota, while the initiated measure is brought from the petitioners directly to the people, it is insisted that after a proposed amendment has been approved by a majority of legal votes cast at a general election, it shall then be referred to the next Legislature; if a majority of all the members elected to each house shall agree upon it, the amendment becomes a part of the Constitution, but if it fails to secure such approval from the Legislature, it must again be referred to the electors at the next general election; and if it then (for the second time) receives a majority of all the legal

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votes cast at that election, it at once becomes a part of the Constitution. In this State, no amendment proposed by initiative petition and failing of adoption shall be considered again until the expiration of six years.

In the constitutions of several States the initiative process is presented simply as an optional method of amending. Nebraska explicitly states that the initiative process of proposing and adopting constitutional amendments shall be supplementary to and in no case construed to be in conflict with the method earlier prescribed for amending her Constitution. In fact the two methods are being employed side by side, at the same time. The following table shows the number of amendments which had been proposed by the two processes in the States which still employ both, which were voted on at the general elections of 1914 and 1916:

Initiative v. *Legislative Constitutional Amendments.*

State.	Character of Amendment.	1914.			1916.		
		Total.	Adopted.	Rejected.	Total.	Adopted.	Rejected.
Arizona,	Initiative,	2	2	–	5	1	4
	Legislative,	3	–	3	2	–	2
Arkansas,	Initiative,	1	1	–	1	–	1
	Legislative,	2	1	1	2	2	–
California,	Initiative,	8	3	5	4	1	3
	Legislative,	22	15	7	–	–	–
Colorado,	Initiative,	8	2	6	2	–	2
	Legislative,	3	1	2	–	–	–
Michigan,	Initiative,	1	–	1	3	1	2
	Legislative,	3	1	2	1	1	0
Missouri,	Initiative,	3	–	3	2	–	2
	Legislative,	8	–	8	1	1	–
Nebraska,	Initiative,	1	–	1	2	1	1
	Legislative,	3	3	–	–	–	–
Nevada,	Initiative,	–	–	–	–	–	–
	Legislative,	2	2	–	2	2	–
Ohio,	Initiative,	4	1	3	3[1]	–	3[1]
	Legislative,	–	–	–	1[1]	–	1[1]
Oklahoma,	Initiative,	4	–	4	2	–	2
	Legislative,	–	–	–	9	–	9
Oregon,	Initiative,	13	2	11	4	3	1
	Legislative,	8	2	6	3	2	1

[1] 1915.

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The Initiative on Ordinary Laws, or the Statutory Initiative.

In substantially identical words the constitutions of more than a dozen States assert that the power is reserved to the people to propose laws and to enact the same at the polls, independent of the Legislature. Twelve States make the Initiative applicable both to laws and constitutional amendments, while six apply it only to ordinary laws. (Idaho, Maine, Montana, South Dakota, Utah and Washington.) In but four of the States are substantial limitations placed upon the Initiative's scope. In Michigan and Nebraska the same limitations prescribed by the Constitution as to the powers of the Legislature are held to apply to the powers of the people in enacting laws. In Montana the Initiative is declared not to be applicable to measures relating to the appropriation of money, to the submission of constitutional amendments, and to local and special laws as enumerated in the Constitution.

The Indirect Statutory Initiative.

In the eight States which have the indirect statutory Initiative, the percentage or number of petition signatures required in general ranges somewhat lower than in the States where the initiated measures are to be transmitted directly to the voters, without passing through the hands of the Legislature. The requirements are as follows: Ohio, 3 per cent; California, 5 per cent; South Dakota, not more than 5 per cent; Michigan, at least 8 per cent; North Dakota, at least 10 per cent; Nevada, not more than 10 per cent; Washington, 10 per cent, but in no case more than 50,000 of legal voters; Maine, not less than 12,000 electors. North Dakota stipulates that the signatures of at least 10 per cent of the legal voters be secured in a majority of the counties of the State, and Ohio requires that each of one-half of the counties shall furnish as signers 1½ per cent of its voters. Four States (Michigan, Ohio, California and Washington) require that the initiative petition be filed at least ten days before the commencement of the session at which it is to be acted upon; Nevada and North Dakota require an interval of at least thirty days. Maine, on the other

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hand, permits the filing of the petition at least thirty days before the close of the session.

The States differ greatly in the part which they assign to the legislatures in connection with the Initiative. South Dakota, the first State to introduce the Initiative, requires that the Legislature "shall enact and submit to a vote of the electors of the State" any measure which has been duly proposed by initiative petition; no discretion nor option is allowed.[1] In three States (Nevada, North Dakota and Washington) precedence is given to initiated measures over all other measures before the Legislature, with the exception of appropriation bills. Six States (California, Maine, Michigan, Nevada, North Dakota and Washington) require that the initiative measures shall be enacted or rejected without amendment by the Legislature. Washington stipulates that the enactment or rejection must be accomplished before the end of the regular session; Ohio makes the time limit four months, while four States allow but forty days for such action. (Michigan, California, Nevada and North Dakota. In the last three States the Legislature's session is limited to sixty days.)

Merely because a measure has been brought before the Legislature by initiative petition signed by a certain percentage of the legal votes, and has been enacted by the Legislature, it is not to be assumed that the measure is without fault, or that it embodies a determined public opinion. Hence seven States explicitly provide that any initiative measure thus enacted shall still be subject to the Referendum. (California, Maine, Michigan, North Dakota, Washington, Nevada and Ohio.) In two States (North Dakota and Washington) the Legislature itself, after having enacted the measure, may refer it to the electors for their verdict. In Maine the Governor may veto an initiative measure, and if his veto is not overridden by the Legislature, the measure must be referred to the people at the next general election. If an initiative measure is rejected, or if no action is taken upon it within the prescribed time, six States (California, Maine, Michigan, Nevada, North Dakota and Washington) require that the Secretary of State submit the measure to the

[1] In 1908 a primary election act was initiated by the requisite number of petitioners but the Senate refused to obey the mandate of the Initiative and the bill was not submitted to the voters.

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people. Ohio makes such submission conditional upon the filing of a supplementary petition with signatures of three per cent of the electors in addition to the number on the original petition.

In their use of the Indirect Statutory Initiative, however, six States accord to the Legislature a far more important rôle than merely to hand on to the voters the petitioners' measure, with or without the Legislature's approval. The Initiative affords a method of securing the enactment or rejection of some proposal which in the opinion of the petitioners the Legislature would otherwise ignore or defeat. But the procedure outlined above gives no assurance, in itself, that the initiative measure will be well drafted, nor does it present any opportunity for amendment or modification, after once the proposal has been phrased upon the petition blanks. The two functions of subjecting the merits of a proposal to searching investigation and debate and of amending it into precise and effective form are the very functions for which the procedure of a legislative assembly is well adapted, provided the assembly is so manned and organized as to put its best efforts upon the task. It is with the intention of securing the Legislature's co-operation along these lines that six States (Maine, California, Washington, Michigan, Nevada and North Dakota), in substantially identical language, provide that any initiative measure not enacted by the Legislature shall be submitted to the electors together with any amended form, substitute or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both. Theoretically, this opportunity should put the Legislature upon its mettle, and incite that representative body, by the thoroughness of its investigation and by the expertness of its draftsmanship, to justify itself in the eyes of the electors by submitting for their approval a model measure. In the six States mentioned, the introduction of the Initiative is of so recent a date that as yet no experience is available for making this direct comparison as to the quality and form of initiative and legislative measures.

With the object of retaining the advantages gained from severe criticism, a novel form of the Initiative has been set forth in a proposed constitutional amendment in Wisconsin.

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It provided: "A proposed law shall be recited in full in the petition, and shall consist of a bill which has been introduced in the Legislature during the first thirty legislative days of the session, as so introduced; or, at the option of the petitioners, there may be incorporated in said bill any amendment or amendments introduced in the Legislature." Inasmuch as any member of the Legislature, under this proposed law, would have the right to present any bill or amendment, this would not be likely seriously to impede the securing of needed legislation, but it would assure an opportunity for expert study of a proposal and for such searching criticism as led, for example, to the complete redrafting twenty different times of the Wisconsin railroad commission bill.

The Direct Statutory Initiative.

In nine States measures proposed by initiative petition may be placed before the voters, without any action having been taken upon them by the Legislature. Five of these States (Arkansas, Colorado, Oregon, Missouri and Montana) require that the petitions shall be signed by eight per cent of the State's legal voters. California and Oklahoma and some of the other States use the aggregate vote cast for all candidates for the highest State office at the preceding election as the basis for computing these percentages. Arizona, Nebraska and Washington require the signatures of ten per cent of the qualified electors, and Missouri, Montana and Nebraska each insist that the petitioners shall be so distributed as to represent a demand for the measure in a large proportion of the counties or districts in the State. Washington sets a fixed maximum requirement, — "in no case more than 50,000 of legal voters."

Majority Required for the Adoption of a Measure.

In most of the States using the Initiative in one form or another, the proposed measure is adopted by a mere majority of those voting *thereon*. Nebraska insists that such majority shall equal thirty-five per cent of the total vote cast at that election. Oklahoma requires approval by a majority of "all votes cast in such election." As a result, in the single election of November 3, 1914, when four initiative constitutional amend-

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ments were placed before the people, although they were approved by majorities ranging from 22,894 to 60,555, not one of them was adopted; in one case the favoring vote was nearly 2 to 1 (117,675 to 57,120). In Idaho the explicit requirement of her Constitution — not yet made effective by statute — is a majority of the aggregate vote cast for the candidates for Governor at the general election.

Amendment or Repeal of Initiative Measures adopted by the Electors.

What power shall the Legislature have to amend or repeal a law which has been enacted not by the Legislature but by the electors? Nevada merely gives to such laws three years' immunity, by providing that during that period they shall not be annulled, set aside or repealed. Both California and Michigan provide that no act or law adopted under the Initiative shall be amended (or repealed, Michigan adds) except by vote of the electors, unless otherwise provided in such initiative measure; but in Michigan the Legislature is authorized to propose amendments, alterations or repeals to the people.

Resubmission of Rejected Measures.

To prevent the wearing out of the voters' patience by the importunity of a small group of persistent initiative petition-signers, Nebraska provides that the same measure either in form or in essential substance shall not be submitted to the people by initiative petition (either affirmatively or negatively) oftener than once in three years.

THE REFERENDUM.

The Compulsory Referendum on Constitutional Amendments.

This might almost be said to be a Massachusetts invention. As has been shown, the venerable Body of Liberties, 1641, was not put into effect until it had been "sent forth among the Freemen" and their approval secured. In the following century, not infrequently questions of moment were referred to the people. During the years which immediately preceded the

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Revolution these appeals became numerous. In the five years 1776 to 1780, seven times grave questions were submitted to a vote by the electors of the whole Commonwealth. Thus in 1776 Massachusetts men were called upon to answer the question: "Do you favor a Declaration of Independence?" and in 1778: "Do you favor a Confederation of the Colonies?" In 1776, 1777 and 1779 they voted upon several proposals to hold constitutional conventions. Finally, it was by a genuine Referendum that the proposed Constitution of 1778 was rejected, and by another Referendum that the Constitution of 1780 was adopted. Thus Massachusetts "gave to the world the first popularly ratified State Constitution."

> Thus came into being an instrument which has been the subject of almost universal encomium. Borgeaud calls it "the most perfect expression of the American theory, as understood at the close of the Revolution". Though not the earliest of the American Constitutions, it is to-day the oldest. While all similar instruments of its time have been swept away and superseded by later Constitutions, it still survives, with prestige unimpaired, supplemented only by amendments which time has made necessary. . . This venerable charter has been a model, both in form and substance, for all subsequent constitution makers.[1]

The precedent proved attractive. Ratification by vote of the people soon became the established rule, and to-day there are few exceptions of State constitutions or amendments thereto which have not derived their authority from the vote of the people.

Including the vote upon the adoption of this Constitution as the first, there have been seventy-three State-wide referenda in this Commonwealth from 1780 to 1917. They have been of different kinds: Five of them have been votes upon proposals for the holding of a constitutional convention (1795, 1820, 1851, 1852, 1916). One was unique, — giving to the men and women of the Commonwealth an opportunity to vote upon "the expediency of granting municipal suffrage to women" (1895). It has been by the voters' sanction that forty-four amendments have been added to the Constitution, and by the people's will that twenty other proposed amendments have been rejected.

[1] C. S. Lobingier, *The People's Law*, 176, 177.

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So thoroughly familiar is this exercise of the Compulsory Referendum in Massachusetts, and so similar is the procedure under it in nearly all the States that there is here no need of its extended discussion. But these many State-wide votings in Massachusetts illustrate clearly several characteristic workings of the Compulsory Referendum. They show the tendency to vote "all one way" or in blocks on a series of proposals. Of the fourteen proposed amendments which embodied the results of the Convention's labors in 1820, nine were adopted, while five were rejected. Of the eight amendments proposed in 1853 all were rejected. These ballotings show a wide variation in the vote which they called forth. Thus, in the excitement which attended the submission of the amendments proposed by the Convention of 1853, the vote on those eight amendments ranged from 100.8 to 101.8 per cent of the vote cast for Governor that same day, and all the measures were rejected. On the other hand, at the very next trial of the Referendum, May 23, 1855, gauged by a like standard, the vote on the six measures submitted ranged from 14.4 to 14.7 per cent, and every one of the six measures was adopted. In fact, of the forty-four amendments which have been adopted, sixteen have been ratified at elections where not 30 per cent of those who voted for Governor had voted for or against the amendments. The climax was reached in 1860 when two amendments ("To provide a method for filling vacancies in the Senate;" "To provide a method for filling vacancies in the Council") were added to the Constitution of this Commonwealth when the votes for and against each of them aggregated only 3.3 per cent of the number of votes cast for Governor that day, — the amendments being actually made a part of the Constitution by a vote-percentage smaller by a third than that required at present in any State of the Union for the number of signatures to a Referendum petition. Obviously the voters considered that these amendments dealt with mere mechanical details of governmental machinery which concerned them but little. Similar testimony comes from many States as to the working of the Compulsory Referendum on Constitutional amendments. Particularly in States where scant attention is given to maintaining any distinction in content between the Constitution and the

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body of the statutes, or where the Legislature is unduly hampered, the constitutional amendments are often of merely local and trivial interest. Thus at the South Carolina election of 1914, of the eleven constitutional amendments voted upon all over the State three related to the bonded indebtedness of individual cities, towns or school districts, five empowered named towns to assess abutting property for permanent improvements, and the rest were of hardly more general or momentous concern. It not infrequently happens that proposed amendments of doubtful merit are allowed to slip through by the Legislature, its members being willing to take whatever credit may result from voting for them, while leaving to the electorate or the courts the question whether the measures shall stand or fall. The evidence is entirely conclusive that the vote on these Compulsory Referenda is materially lower than on measures submitted by the Initiative or by the Optional Referendum. The signers of initiative and referendum petitions, by putting their names to those documents, give evidence of a considerable popular interest if not of a pronounced public opinion as to the proposals, whereas in the case of the Compulsory Referendum on constitutional amendments there is no basis for such a presumption.

It deserves consideration, therefore, whether the Compulsory Referendum as to constitutional amendments should not be given up, at any rate except in regard to a limited range of important topics. If it were required that proposed amendments should be approved by exceptional majorities in the Legislature (as at present in Massachusetts) and then be subject to the Optional Referendum, on petition of a stipulated number of qualified voters, it can hardly be doubted that in most States, on the one hand, constitutional amendments would receive more searching criticism than is now given them, while on the other, the ballot would be rid of a considerable number of proposals in which the voters can be expected to take but the slightest interest.

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The Optional Referendum.

In contrast with the Compulsory Referendum, the Optional Referendum brings a proposal before the electors not by the mandate of law but by some one's voluntary choice. In the first place, this choice may be exercised by the Legislature which has enacted the measure in question.

The Legislative Referendum.

The people's verdict may be sought by the Legislature as a reply to some question of public policy, as when in 1895 the General Court called upon the voters to answer the question as to the expediency of granting municipal suffrage to women.

Many years ago the Legislatures in one State after another made the experiment of submitting to the electors not such an exceptional question, but an actual law, enacted by the ordinary procedure, but to which the Legislature had "attached a referendum," — *i.e.*, made its going into effect contingent upon its receiving a majority vote of approval from the electors. The motives for such action were diverse: in some cases, a politic wish to shift responsibility in a difficult situation; in others a democratic deference to the unknown will of the majority; in others, uncertainty as to how the interests of the public would be affected by the measure, or a desire to secure for it the backing of a declared public opinion.

Such action by the Legislatures was promptly challenged as an unwarranted delegating of legislative power. Courts in Massachusetts, New York and several other States gave decisions to that effect. Vermont and Wisconsin courts, on the other hand, held that such references were constitutional. Dicta may be cited from a dozen States — a large proportion of them in the South — holding that view. In spite of the clash of judicial opinion and of constitutional declaration — for such reference is expressly prohibited by the Constitutions of Indiana and Kentucky, and expressly permitted by the Constitutions of Arizona, Arkansas, Colorado, Maine, Michigan, Missouri, Montana, Oklahoma, Oregon and Washington (*Equity*, XVI, 24) — the practice became more common.

In 1913 it secured formal recognition in Massachusetts.

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Article XLII of the Amendments provides: "Full power and authority are hereby given and granted to the General Court to refer to the people for their rejection or approval at the polls any act or resolve of the General Court or any part or parts thereof. Such reference shall be by a majority yea and nay vote of all members of each house present and voting," etc.

The measures which the General Court, under this warrant, has referred to the people and the result of their votings are as follows:

Election of November 3, 1914.

	Yes.	No.	Majority for.	Per Cent Total Vote.
1. An Act to make Saturday a half holiday for laborers employed by the State, ...	248,987	128,251	120,736	82
2. To abolish the enrollment of members of political parties, . .	253,716	86,834	166,882	72

Votes for Governor, 458,204.

Election of November 7, 1916.

	Yes.	No.	Majority for.	Per Cent Total Vote.
1. An Act making New Year's Day a legal holiday, ...	312,678	113,142	199,536	80
2. An Act to prevent the voters of one political party from voting in the primaries of another political party, ...	209,624	150,050	59,574	68
3. An Act to ascertain and carry out the will of the people relative to the calling and holding of a Constitutional Convention, . . .	217,293	120,979	97,314	64

Votes for Governor, 526,421.

The Statutory Referendum (Optional Referendum by Petition).

The second form of Optional Referendum is that in which it is the choice of a certain number of qualified voters that determines that an act of the Legislature shall be submitted to

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the electors, for their approval or rejection by majority vote. It is over this form of Referendum that present-day opinion and practice, in the several States, most widely differ.

States have brought the Statutory Referendum into their constitutions in the following order:

Year.	State.	Petition Signers.
1898,	South Dakota,	5 per cent.
1900,	Utah,	10 per cent.
1902,	Oregon,	5 per cent.
1905,	Nevada,	10 per cent.
1906,	Montana,	5 per cent.
1907,	Oklahoma,	5 per cent.
1908,	Maine,	10,000 voters.
1908,	Missouri,	5 per cent.
1910,	Arkansas,	5 per cent.
1910,	Colorado,	5 per cent.
1911,	Arizona,	5 per cent.
1911,	New Mexico,	10 per cent.
1911,	California,	5 per cent.
1912,	Ohio,	6 per cent.
1912,	Nebraska,	10 per cent.
1912,	Washington,	6 per cent.
1912,	Idaho,	Not yet determined.
1913,	Michigan,	5 per cent.
1914,	North Dakota,	10 per cent.
1915,	Maryland,	10,000 voters.

The Statutory Referendum first found its way into an American State constitution in South Dakota, 1898, in the declaration that the right was reserved to the people "to require that laws which the Legislature may have enacted shall be submitted to the vote of the electors before going into effect." In Oregon, the State which has used this form of the Referendum most freely, its enunciation was as follows: "The power is reserved to the people at their own option to approve or reject at the polls any act of the Legislature, except . . ." etc. The most widely adopted formula reserves "the power to approve or reject at the polls any act, item, section or part of a bill, act or law passed by the Legislature, except . . ." etc.

There is wide diversity as to the scope of the Referendum's applicability. California, Idaho and Nevada declare it to be applicable to any law. Fifteen States make it applicable to any measures except those specifically prohibited. A dozen States concur in declaring exempt from Referendum petition

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"laws necessary for the immediate preservation of public peace, health or safety." In many States laws for the support of the State government, or its various institutions, including the public schools, are excluded from the Referendum's test. Maine makes elaborate provision to prevent the trammeling of the Legislature by Referenda on resolutions concerning its procedure, etc.

In order that ample opportunity may be afforded for the filing of Referendum petitions, it is ordinarily provided that no law (with the exception of those classes to which the Referendum is not applicable, as cited above, or of "emergency measures," to be discussed later) shall go into effect for a certain period after its passage. In the great majority of the States which have adopted the Referendum, this interval is ninety days from the end of the legislative session in which the act was passed. Utah prescribes only sixty days. Ohio provides that the ninety days shall run not from the end of the session but from the time when the Governor files the approved law.

Emergency Measures. — In drafting a Constitution's sections relating to the Referendum, the clause relating to emergency measures presents a difficult problem. Unless the power is given to the Legislature to forestall the use of the Referendum in time of stress, there is danger that the public interest may be seriously injured through the delay of needed legislation by the filing of a referendum petition against the measure in question. On the other hand, there is a real danger that a Legislature, if given any discretion as to the forestalling of a Referendum, may abuse that power by alleging an emergency, in the case of many a measure, where no real emergency exists. In Oregon this abuse is said to have led to the Governor's vetoing several measures to which the Legislature had applied an emergency clause. The record of the South Dakota Legislature in this matter is highly suggestive.[1]

[1] In 1915, however, the Supreme Court of South Dakota held in State *ex rel.* Richards v. Whisman, 36 S. D. 260, that the emergency clause cannot defeat a Referendum unless an *actual* emergency, as defined by the Constitution, exists. A falling off in the number of emergencies seems to have set in.

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Year.	Total Acts passed.	Passed with Emergency Clause.
1899,	126	65
1901,	185	82
1903,	223	107
1905,	173	87
1907,	249	100
1909,	295	96
1911,	265	122
1913,	371	151
1915,	307	129
1916,	3[1]	2
1917,	376	98
	2,573	1,039[2]

[1] Special session. [2] Forty per cent.

The States differ widely in the degree of discretion which they leave to the Legislature in dealing with this matter. In Missouri any act is an emergency measure which is declared so to be. Acts making appropriations are privileged as emergency measures in Michigan, and measures for the support of the State government and State institutions are so listed in Arizona. The definition of "emergency measures" which has found widest acceptance is: "measures immediately necessary for the preservation of the public peace, health or safety." Substantially this phrasing is found in the Constitutions of nine States. (Arizona, Michigan, Nebraska, New Mexico, Ohio, South Dakota, California, Maine and Oklahoma.) But several of the States, distrusting the interpretation which a heedless or reckless Legislature might put upon these simple phrases, have sought to remove temptation by narrowing the range of possible interpretation. Thus, the California Constitution adds to the above definition the following: "*Provided, however,* that no measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege, shall be construed to be an emergency." Maine makes special exclusion of the following: "(1) an infringement on the right of home rule for municipalities; (2) a franchise or license to a corporation or individual to extend longer than one year, or (3) provisions for sale or purchase or renting for more than five years of real estate."

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Five of the States secure the desired object not by sharper definition of "emergency" but by requiring that the Legislature shall explicitly declare in the act itself that the proposed act is an "emergency measure." Some insist that this declaration be placed in a separate section. Maine and North Dakota require that the section declaring it an emergency shall state the facts constituting the emergency, and California and Ohio require that that section be passed only by a yea and nay vote, upon a separate roll-call thereon. Nearly all of the States which exempt emergency measures from the Referendum require that the justification for such action shall be evidenced by an exceptional vote, the ordinary minimum being a two-thirds vote of all members elected to each house. Other States require an aye and nay vote in each house, to be entered on the journal, and a three-fourths vote, in case of the Governor's veto. It is generally provided that acts passed as emergency measures shall go into effect "immediately" (California, Michigan, Ohio, Oregon, Washington) or "when the Legislature directs" (Maine, Missouri, Nebraska, South Dakota).

Number of Signers required. — Nine of the States which have introduced the statutory Referendum insist that the petitions therefor shall bear the signatures of five per cent ("not more than five per cent," says South Dakota) of the legal voters in the State. (Reckoned on the list of registered voters in November, 1916, in Massachusetts, this would mean 32,544 signatures.) It may be a matter of some significance that the table of enactments of Initiative and Referendum amendments seems to indicate a distinct tendency to increase the percentage required. Ohio and Washington insist upon six per cent, but — in the latter State — in no case more than 30,000 voters. Four States require ten per cent. Maine and Maryland make the test not a percentage but a minimum number, — "not less than 10,000 electors." Missouri, Montana, Ohio and New Mexico insist that the petitioners shall be widely distributed, New Mexico stipulating that that aggregate of ten per cent of the voters shall comprise "not less than ten per cent of the qualified electors of each of three-fourths of the counties."

Time of Filing the Petition. — The provisions as to the filing of the petition, of course, vary in accordance with the individual

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State's rule as to the time when the acts of its Legislature go into effect. A dozen of the States allow ninety days after the adjournment of the Legislature by which the measure in question has been enacted. Ohio dates the ninety days from the Governor's filing of the law. Montana extends the time to six months from the end of the Legislature's session. New Mexico starts from the other end, insisting that the petition must be filed not less than four months prior to the next general election.

Does the Filing of a Referendum Petition Suspend the Law? — In fifteen States, upon the filing of a Referendum petition within the allotted time and bearing the requisite number of signatures, the operation of the measure against which it is directed is suspended until it shall have received the approval of the voters at a general or special election. In this very fact lies the cause of filing some petitions. The Statutory Referendum has been advocated mainly as a device for blocking bad measures. But, like all modes of obstruction, it can be used for unworthy ends, and from several States comes convincing evidence of the filing of referendum petitions against measures which were passed in the public interest and which were sure to be approved at the polls; but the possibility of securing nearly two years' delay in the law's going into effect was a stake worth striving for on the part of the real instigators of the petition.

To prevent this misuse of the petition, Nevada provides that the challenged measure shall remain in force until its rejection. Both California and Ohio provide that acts for the immediate preservation of the public peace, health or safety shall continue in effect until rejected by the voters or repealed by the Legislature. Although Montana requires the signatures of but five per cent of her legal voters upon a referendum petition, she insists upon the signatures of fifteen per cent to an extraordinary petition to effect the suspension of the measure, and New Mexico requires the signatures of twenty-five per cent upon a similar petition.

The Referendum may apply to Part of a Measure. — In nine States the Referendum has been planned on the model of the itemized veto possessed by the Governor in many of the States. In substantially identical language, it is provided that the

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filing of a petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative.

When is the Referendum to be submitted to the Voters? — The usual provision is that the measure against which a Referendum petition has been filed shall be submitted to the people at the next general election. Four States add the phrase: "occurring at any time subsequent to thirty days after the filing of the petition." California and Maine provide that the Governor may call a special election to pass upon such measures.

By what Vote is a Referred Measure Adopted? — On the question what vote should be required for the adoption of a measure referred to the people there is pronounced difference of opinion among students of government and difference of practice by the several States. Of those which have introduced the Referendum alone, or which deal with it separately, three (Nebraska, North Dakota and Oklahoma) provide that the measure shall be adopted by a mere majority of the votes cast thereon, without regard to the aggregate of the number expressing any opinion upon the question. Nevada requires that a majority of the electors voting at that State election shall vote in approval of the measure. New Mexico provides that the measure shall be rejected, if a majority of legal votes cast thereon and not less than forty per cent of the total number of legal votes cast at that election shall be cast for its rejection. It deserves to be recalled, in this connection, that of the seventy-three Referendum votes taken in the Commonwealth of Massachusetts sixteen failed to secure an aggregate vote of thirty per cent of the number cast at that election. For further discussion of required majorities, see page 216.

Amendment and Repeal of a Measure Approved on Referendum. — When a measure has been approved by direct vote of the people, shall it be immune from change by the ordinary legislative process? California and Michigan are content to allow such measures to be amended by the Legislature at any subsequent session, trusting to a later Referendum to baffle any attempt there made to reverse the voters' decision. Nevada, on the other hand, declares that a measure which has

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been adopted by the electors shall in no way be amended, suspended or made inoperative except by direct vote of the people.

To what Extent is the Statutory Referendum Invoked, and how Many Laws are Rejected thereby? — In view of the enormous number of laws turned out each year by our legislative mills, and in view of the further fact that the Statutory Referendum has been introduced only in States where the work of the Legislature was more or less under suspicion, the number of laws which have been challenged by Referendum petitions is surprisingly small. The following table presents the record. Of course the securing of an *adverse* majority was the goal at which the referendum petitioners aimed.

State.	Year.	Acts referred.	Accepted.	Rejected.
Arizona,	1912	8	8	–
	1914	4	2	2
	1916	–	–	–
Arkansas,	1912	1	–	1
	1914	–	–	–
	1916	2	1	1
California,	1912	3	–	3
	1914	4	3	1
	1916	1	–	1
Colorado,	1912	6	1	5
	1914	5	1	4
	1916	1	1	–
Maine,	1910	3	–	3
	1911	–	–	–
	1912	1	1	–
	1913	–	–	–
	1914	1	1	–
	1915	–	–	–
	1916	1	1	–
Missouri,	1914	4	–	4
	1916	–	–	–
Michigan,	1914	–	–	–
	1916	–	–	–
Maryland,	1916	–	–	–
Montana,	1912	1	–	1
	1914	1	–	1
	1916	–	–	–

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States.	Year.	Acts referred.	Accepted.	Rejected.
Nevada,	1908	1	1	–
Nebraska,	1914	3	1	2
	1916	–	–	–
North Dakota,	1916	2	2	–
Ohio,	1914	–	–	–
	1916	–	–	–
Oklahoma,	1910	1	–	1
	1912–16	–	–	–
Oregon,	1908	1	–	1
	1910	3	2	1
	1912	3	1	2
	1914–16	–	–	–
South Dakota,	1908	3	3	–
	1910	5	–	5
	1912	3	3	–
	1914	1	–	1
	1916	1	–	1
Washington,	1914	–	–	–
	1916	7	–	7

In seventeen States, since their introduction of the Statutory Referendum, the compiler finds a record of petitions being filed only in the case of eighty-one measures. In forty-eight instances the challenge has resulted in the rejection of the acts which had been passed by the Legislature. The record of the Washington Legislature of 1916 was such as to arouse great popular protest, and the result was the rejection of a long list of its acts. But the rest of the table gives no indication of an increasing disposition to hold up legislation by the Referendum. Of course, its advocates' contention is that its main service lies in the deterrent effect which it exercises upon Legislatures while they are doing their work, rather than in the later repudiation of their work.

Nature of Laws rejected. — The following list indicates the nature of the laws which have been rejected at the last two general elections, and the degree of interest manifested in those Referenda, as gauged by the aggregate vote cast upon each question, as compared with the vote cast for candidates for the highest office filled at that election.

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Laws rejected by Referenda, 1914 and 1916:

State.	Year.	Measure.	Per Cent Total Vote.
Arizona,	1914	Relating to the creation of new counties,	65
		Changing county seats,	66
California,	1916	Direct Primary Law,	68
Colorado,	1914	For a public utilities commission,	41
		Licensing commission merchants,	42
		Special provision for additional peace officers,	45
Missouri,	1914	Requiring railroads to employ full crews of trainmen,	78
		Making counties the sole units in local option elections,	78
		Providing for a bi-partisan board of excise commissioners,	70
		Providing for a bi-partisan board of police commissioners,	70
Montana,	1914	Establishing a commission to regulate boxing contests,	48
Nebraska,	1914	University removal,	90
		Nebraska City Armory,	74
South Dakota,	1914	Amending Northern Normal School charter,	78
Washington,	1916	Requiring the signing of initiative and referendum petitions at registration places,	68
		Recall petitions to be signed at registration places,	68
		Return to party conventions,	66
		Against election picketing,	70
		Certificate of convenience and necessity,	66
		Port Commission Bill,	64
		Budget Bill,	66

The Missouri and Washington elections were "Vote 'No'" elections, in which every measure put before the voters was rejected, — fifteen in the former and ten in the latter State.

THE STATUTORY INITIATIVE AND REFERENDUM: COMMON PROVISIONS.

Despite the fact that there are marked differences in the theory and intent of the Initiative and Referendum — the one being designed to force the enactment of laws which the Legislature is reluctant to pass, while the other is intended to annul objectionable laws which the Legislature has already passed — there is much in the procedure employed which is common to

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both, and many States reserve to the people both forms of legislative power and provide regulations for its exercise in the same article of the Constitution or in the same statute. Such provisions, relating alike to the working of the Initiative and Referendum, will therefore be discussed together in the following pages.

Method of Invoking the Initiative and Referendum: the Petition.

The pioneer State to reserve to the people the power of direct legislation, South Dakota, made no provision in her constitutional amendment as to the method by which the "not more than five per centum of the qualified electors of the State" should invoke the Initiative or Referendum, but required that the Legislature should make suitable provisions for carrying the amendment's provisions into effect. This was done the following year. But Utah (1900) and Idaho (1912), having by constitutional amendments reserved these powers to the people "under such conditions and in such manner as may be provided by the Legislature," have discovered that an amendment may prove of no effect unless it is made self-executory. Not till 1917 did the Utah Legislature provide the necessary statute, and the Idaho Legislature has not yet acted. All the other States make explicit provision that the voters' challenge for the enactment or rejection of laws shall be by petition.

The Petition's Form and Content.

The petition, addressed to the Governor or Secretary of State, in form follows provisions set forth in the statute or the rules laid down by the Secretary of State, Attorney-General, or some commission dealing with elections. Four States (Arizona, California, Michigan, Maine) have made it a constitutional requirement that every petition shall contain a full and correct copy of the text of the measure in question.

The Signatures.

Who may solicit them, and on what Basis? — Three States (Colorado, Maine, Ohio) require merely that the solicitor shall be a qualified elector of the State. Others insist that he must

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be an elector of the city or county in which he is circulating the petition.

In most of the States the solicitation has been to a large extent by paid signature-getters, the ordinary rate being five cents a name. In some States solicitors have been sought by newspaper advertisements, promising high rates of pay. The assumption that the number of petitioners' names thus secured affords any real gauge of the quantity or quality of public opinion on a given measure finds little basis in logic or experience. Flagrant and wholesale frauds on the part of solicitors have been discovered. Oklahoma's Constitution provides that laws shall be enacted to prevent corruption in connection with these petitions. In 1913 South Dakota's Legislature enacted a law prohibiting the circulator of such petitions from receiving compensation therefor. Yet the task of securing the signatures of five per cent of the voters (in Massachusetts some 32,000 names) must involve much time and effort. In Oregon it has repeatedly been found that even such large and elaborately organized associations as the State Grange, in seeking to further measures in which its members were vitally interested, after exhausting volunteer efforts, have had to hire solicitors to secure the last hundreds. Question has been raised whether the prohibition of pay for signature-getting would not in some instances stand in the way of desirable and justifiable use of the petition. If such prohibition is to be made, the percentage or number of names required becomes a matter for serious consideration.

What Information should accompany the Signature? — With the signature there should be given enough detail to make possible the identification of the signer. The usual requirement is that the signer shall state the street and number of his residence. Some States insist that he shall put down his election precinct, and date his signature.

How shall the Genuineness of his Qualifications be Evidenced? — 1. Arizona accepts each petitioner's declaration that he is a qualified elector.

2. Maine requires the certificate of the local city or town clerk that the signers' names are on the voting list as qualified to vote for Governor.

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3. By affidavit. Four States require that the affidavit be signed by the circulator of the petition. Maine requires it from any one of the certified petitioners, and Colorado from any qualified elector.

The most common formula asserts that "the signatures are genuine to the best of the affiant's knowledge and belief, and that they were made in his presence." Colorado insists that he state that to the best of his knowledge and belief the signers are electors, and Ohio "that the petitioners signed with knowledge of the contents of the petition and on the dates set opposite their names." South Dakota's affidavit is even more exacting (act of March 13, 1913).

The Basis for Computing the Number of Signers. — In most States the requisite number of signatures is determined as a percentage of the whole number of electors who voted for Governor (or for the highest elective officer) at the regular election next preceding the filing of any petition for the Initiative or Referendum. In States like Oregon, which have adopted woman's suffrage since they wrote "eight per cent" and "five per cent" into their constitutional amendments, the difficulty involved in getting a measure upon the ballot has been practically doubled, which may have a bearing upon the fact that the number of measures voted on has shrunk from thirty-seven in 1912 to twenty-nine in 1914, and eleven in 1916.

Maine makes her requirement a definite number of signatures, — 12,000 in the case of the Initiative and 10,000 in the case of the Referendum petition.

The Filing of the Petition.

A dozen constitutions merely state that the petition shall be filed with the Secretary of State. The California and Michigan Constitutions go most into detail as to the filing of sections of the petition with the county clerk or local registrar of voters, and his duties as to examining, certifying and transmitting it to the Secretary of State. California, Michigan and Ohio permit the filing of supplementary petitions in case it is found that the original one has not been signed by the requisite number.

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The Submission of the Measure to the Electors.

As to the submission of measures to the people, some constitutions declare that the procedure shall be governed by general laws and the amendment establishing the Initiative and Referendum, until additional legislation shall especially provide therefor. In some of the later constitutions, however, the whole procedure is laid down in intricate detail. Ohio's Constitution affords a bewildering example.

Methods of Publicity. — One of the most important questions is, what information or assistance shall the State provide for the elector in preparation for his task? Three of the constitutions merely provide that the text of all measures to be submitted shall be published as constitutional amendments are published. Arizona, Arkansas and Colorado insist that the measures shall be printed in full in at least one newspaper in each county where a newspaper is published, for times varying from one to three months. Maine trusts to the distribution of sample ballots to give needed publicity. On the other hand, half a dozen States take the duty more seriously, and provide for the distribution of the measure and arguments thereon. In Oregon one brief or argument may be presented by the sponsors for a measure and any number by those persons or organizations who oppose it, the cost of printing and of paper being borne by those who present the arguments; these are compiled by the Secretary of State into a campaign pamphlet, containing the ballot title, exactly as it is to appear in the voting booth, and the full text of each measure. These are to be mailed to "every voter in the State whose address he may have" fifty-five days in advance of the general election. The cost of binding and distribution and of printing, except that of the arguments, is borne by the State. It is unusual for arguments to be presented by both the advocates and the opponents of a measure, and half the measures appear unaccompanied by any argument.

In California the Constitution provides that persons to prepare and present arguments for and against each measure shall be designated by the presiding officer of the Senate. Although some of these arguments are spiritless, this method, neverthe-

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less, assures the voter's having an opportunity to see what is to be said upon both sides of every measure upon which he is to pass judgment. In Ohio the persons to prepare the arguments are selected by the Legislature, or by the Governor, if the Legislature is not in session, and the arguments, in each case, must not exceed three hundred words. Montana, Oklahoma and Washington also make provision for publicity by official pamphlets, in which the full text of the measures is accompanied by arguments. This method involved considerable expense, though it is to be doubted whether it is greater than that demanded for newspaper advertising, and it is more free from favoritism or graft. Despite the fact that many of the campaign pamphlets are entirely wasted, this method, nevertheless, gives every voter his opportunity to inform himself. Some gauge of its effectiveness in stimulating interest can be secured by comparing the percentage of voters who actually vote on these measures with those voting in the election of candidates, in States employing these campaign pamphlets and in States which trust to newspaper publication of the measures; or a similar comparison may be made within the same State before and after its adoption of the pamphlet. Thus, in California, 1899 to 1908, "the average vote on the fifty-one measures submitted by the Legislature, indicated as a percentage of the total attendance at the polls, was forty-three per cent."[1] On the seven measures submitted to the voters in 1916, the average was seventy-nine per cent.

The Ballot. — In most States the Constitution devolves upon the Secretary of State the duty of preparing the titles which shall stand for the measures upon the ballot, "in such form as to present the question or questions concisely and intelligibly" (Maine). In Oregon the phrasing of the ballot title is the duty of the Attorney-General. Much hinges on the skill and honesty with which this simple task is performed.

Conflicting Provisions or Measures. — Four States (Arizona, California, Nebraska and Nevada) provide that, if conflicting measures submitted to the people at the same election shall be approved by the electors, the measure receiving the highest number of affirmative votes shall thereupon become law as to

[1] Holcombe, *State Government in the United States*, 423.

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all conflicting provisions. In case of conflicting measures appearing upon the same ballot, Washington's Constitution provides that the voter shall have an opportunity to express two preferences: (1) as between either measure and neither, and (2) as between one and the other. If the majority of those voting on the first issue is for neither, both fail; but in that case votes on the second issue shall nevertheless be carefully counted and made public. If the majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

Majority Required for Adoption. — In the constitutions which make general provision for both the Initiative and Referendum together, seven States require for the adoption of a measure merely a majority of the votes cast thereon (Arizona, California, Colorado, Maine, Michigan, Missouri, Oregon). Washington insists that the vote cast upon such measures shall equal one-third of the total vote cast at that election. Nebraska requires that the vote in favor of the measure shall constitute thirty-five per cent of the total vote cast at the election. Nevada insists upon the approval of each referred measure by a majority of those voting at that election, while each Initiative measure is adopted by a majority of the votes cast thereon. In Oklahoma, on the other hand, Initiative measures require a majority of the votes cast at the election, while a referred measure is given effect by a majority of the votes cast thereon. In Arkansas, measures submitted to the voters by the Legislature, whether constitutional amendments or statutes, require the approval of a majority of the votes cast at that election, whereas measures brought before the electors by initiative or referendum petition require only a majority of votes cast thereon.

The insistence upon a majority of the votes cast at the election has caused the failure of many measures upon which the approval of those actually voting on them was heavily preponderant. Thus, in Arkansas (November 7, 1916) the total vote for candidates was 167,505. A "Good Road Tax" measure was approved by the voters, 82,503 to 66,150, a majority of 16,353, yet it "failed to pass," because the favoring vote did not exceed 83,753. In the Oklahoma votings on

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the eleven measures at the regular elections in the years 1908 and 1910 five bills of importance, which were approved by majorities ranging from 27,994 to 58,503, nevertheless failed of enactment because the constitutional majority was not secured.

Canvass of the Returns. — Arizona is the only State to require any exceptional formality in the procedure of canvassing the votes for and against Initiative and Referendum measures: the Secretary of State is to do this service in the presence of the Governor and Chief Justice of the Supreme Court of the State.

Governor's Veto on Submitted Measures. — Fifteen States explicitly declare that the Governor's veto power shall not extend to measures which have been approved by vote of the people.

Resubmission of Rejected Measures. — In order that the electors may not be tired out by the importunity of advocates for a measure for which there is no substantial demand, the Oklahoma Constitution provides that no measure which has been rejected by the people through the powers of the Initiative or Referendum can be again proposed by the Initiative within three years thereafter by less than twenty-five per cent of the legal voters. Similar action is under consideration in several States, and is being advocated by some of the principal leaders in the propaganda for the Initiative and Referendum.

Amendment and Repeal of Adopted Measures.

On this point there is wide diversity in the laws of the several States. Oklahoma declares that the reservation of the powers of the Initiative and Referendum shall not deprive the Legislature of the right to repeal any law, or propose or pass any measure which may be consistent with the Constitution of the State and the Constitution of the United States. On the other hand, Arizona (by an amendment adopted in 1914 by a majority of 83 in a vote of 16,567 to 16,484) provides the power of the Governor to veto or of the Legislature to amend or repeal shall not extend to initiative or referendum measures which have been approved by the electors. The Washington Constitution pursues a more moderate course than either of these; it discourages hasty or resentful action on the part of the Legis-

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lature by providing: "No act, law or bill, approved by a majority of the electors voting thereon, shall be amended or repealed by the Legislature within a period of two years following such enactment."

Relation of Initiative and Referendum to the Rights of Members of the Legislature.

Ten State Constitutions are at pains to set forth that the section relating to the Initiative and Referendum shall not be construed to deprive any member of the Legislature of the right to introduce any measure. On the other hand, the Oregon Constitution is explicit in its statement that the words "the legislative assembly shall provide," or any similar phrases in the Constitution, shall not be construed to grant to the Legislature any exclusive power of law-making, nor in any way limit the Initiative and Referendum powers reserved to the people.

The Number of Measures on the Ballot and their Limitation.

The great number of measures which have been placed upon the ballot has at times imposed a preposterous task upon the voter, after all allowance is made for his being supplied with a campaign book with two months for its study. But an examination of these long lists of measures (*e.g.*, Ohio, 42 in 1912; Oregon, 37 in 1912; California, 48 in 1914) discloses that a very considerable proportion of these measures were brought before the people, not by initiative or referendum petition, but by the Legislature itself in starting constitutional amendments, or in attaching a referendum clause to its own bills. In not a few cases it is the Compulsory Referenda which have least enlisted and deserved the electors' interest.

Apparently this abuse of numbers is correcting itself in some measure. There has been a marked falling off in several States in the number of measures upon which the people have been asked to vote. In some cases this may be attributed in part to the doubled difficulty in securing the fixed *percentage* of voters as signers of petitions, after the granting of the suffrage to women. In the first few years after the introduction of the Initiative, it is to be expected that measures which its sponsors have been seeking will be forced upon the ballot. The more

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desirable of these are soon secured. With that accomplished, and with the novelty of the Initiative and Referendum worn off, there seems a clearly marked and general tendency for these legislative devices to come to their more normal use, as implements or weapons not to be played or experimented with, but to be kept in readiness for time of need.

JUDICIAL DECISIONS RELATING TO THE INITIATIVE AND REFERENDUM.

Of the questions relating to the Initiative and Referendum which have been brought into court, the following are the most important:

1. Do the Initiative and Referendum abolish or interfere with that "republican form of government" which is guaranteed to every State in this Union under Section 4 of Article IV of the Federal Constitution?

The Supreme Court of the United States, in Pacific States Telephone and Telegraph Co. *v.* Oregon (1912), 223 U. S. 118, held that the question as to when the government of a State had ceased to be republican in form, and when there was call for the enforcement of the above guaranty were questions "not cognizable by the judicial power, but solely committed by the Constitution to the judgment of Congress." In delivering the opinion, Mr. Chief Justice White reaffirmed the doctrine of the "absolutely controlling case" of Luther *v.* Borden, quoting from that decision: "When the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, are recognized by the proper central authority. And its decision is binding on every other department of the government and could not be questioned in a judicial tribunal." Congress has virtually decided in favor of the Initiative as a proper instrumentality in State government by receiving without protest the representatives and senators as members of both houses of Congress from South Dakota, Oregon, Maine and other States having the Initiative in their Constitutions, and also by admitting to the Union Oklahoma and Arizona, with Constitutions which contained the Initiative.

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"The initiative and referendum amendment does not abolish or destroy the republican form of government or substitute another in its place. The people have simply reserved to themselves a larger share of legislative power." Kadderly *v.* Portland (1903), 44 Ore. 118, reaffirmed in State *v.* Pac. States Tel. & Tel. Co. (1909), 53 Ore. 162, and followed in *Ex parte* Wagner (1908), 21 Okla. 33. See Kiernan *v.* Portland (1910), 57 Ore. 454. "It seems inconceivable that a State, merely because it may evolve a system by which its citizens become a branch of its legislative department, co-ordinate with their representatives in the Legislature, loses caste as a republic."

Much the same doctrine has been held in the following cases, representing four different States:

State *ex rel.* Schrader *v.* Polley (1910), 26 So. Dak. 5.

Ex parte Wagner (1908), 21 Okla. 33. This calls attention to President Roosevelt's proclamation in admitting Oklahoma as a State: "Whereas it appears that the said Constitution and government of the proposed State of Oklahoma *are republican in form,*" etc.

State *ex rel.* Linde *v.* Taylor (1916), 33 N. D. 76.

In *Ex parte* Farnsworth (1911), 61 Tex. Crim. Rep. 342, the Initiative and Referendum were declared to be unconstitutional by the Court of Criminal Appeals of Texas, but their constitutionality was upheld by the Supreme Court of Texas in Southwestern Tel. & Tel. Co. *v.* City of Dallas (1911), 104 Tex. 114.

2. Who decides what constitutes an "emergency?" "The Legislature, having declared that an act is an emergency measure, such decision is final, and is conclusive upon the courts." State *ex rel.* Lavin *et al. v.* Bacon *et al.* (1901), 14 S. D. 394. This was reversed in State *ex rel.* Richards *v.* Whisman (1915), 36 S. D. 260, in which it was held that the emergency clause cannot defeat a referendum unless an actual emergency, as defined by the Constitution, exists.

In 1916 the Supreme Court of Colorado held that the declaration by the General Assembly is conclusive and the courts cannot review the question so as to allow a referendum petition. Similar decisions have been given in the courts of Oregon,

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Arkansas, Oklahoma and North Dakota. Other holdings have been noted in Washington, Michigan and California.

3. Who judges of the sufficiency of the petition? The Supreme Court of Ohio, in The State *ex rel.* Gongwer *v.* Graves (1914), 90 Ohio St. 311, held that the final authority is vested in the Secretary of State.

The following articles summarize some of the most important decisions:

"The Initiative and Referendum before the Supreme Court," *Bradstreet's*, February 24, 1912. Vol. 40, 117.

"The Initiative and Referendum a Political Question," *Central Law Journal*, March 1, 1912. Vol. 74, 151.

See also C. A. Beard: *Documents on the Initiative, Referendum and Recall*, 291–348.

THE INITIATIVE AND REFERENDUM IN LOCAL GOVERNMENT.

The Initiative and Referendum have proved in harmony with the general scheme of the "Commission Form" of city and town government, and during the past fifteen years have been widely introduced, the country over.[1]

In Massachusetts their use was authorized in charters granted by special acts to the following cities:

Year.	City.	Initiative.	Referendum.
1908	Gloucester, . .	25 per cent, ...	25 per cent.
1908	Haverhill, . .	10 per cent, general election, . . . 25 per cent, special election.	25 per cent.
1910	Lynn, . . .	10 per cent, general election. 25 per cent., special election, .	25 per cent.
1911	Lawrence, . .	25 per cent, general election, . 25 per cent, special election, . .	25 per cent. 25 per cent.
1911	Lowell, . . .	10 per cent, general election, . 20 per cent, special election.	15 per cent.

The percentage of signatures required on petitions to invoke the Initiative and Referendum is figured on the total vote for

[1] No municipality in the United States has made more extended use of the Initiative and Referendum than has Portland, Oregon. (See Table of Votings, Appendix D.)

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candidates for the position of mayor or of Governor at the last preceding election. Of the five cities, only Lowell, Lawrence and Lynn have thus far invoked this procedure.

In 1915 (chapter 267, An Act to simplify the revision of city charters) the General Court set forth four standard forms of charter, and authorized the citizens of any municipality of the prescribed population, with the exception of Boston, to choose for themselves the one of the four which they wished to adopt, without recourse to the Legislature. Common to all four of these forms of charter were the provisions relating to the Initiative and Referendum. In case an Initiative petition is signed by twenty per cent of the registered voters, addressed to the city council or to the school committee, it shall be transmitted to the body to which it is addressed; that body shall either pass the said measure without alteration or the city council shall call a special election, at which that measure shall be submitted to the voters, and no measure so submitted shall go into effect unless it receives the affirmative vote of at least one-third of the whole number of registered voters. If the Initiative petition is proposed by a petition bearing the signatures of eight per cent but less than twenty per cent of the registered voters, and if the measure is not passed without alteration within twenty days by the city council or school committee, as the case may be, that measure must be submitted to the voters at the next regular city election.

A Referendum may be invoked on any measure passed by the city council or by the school committee, if a petition calling therefor is filed within twenty days of its passage, signed by registered voters, equal in number to twelve per cent of the registered voters of the city. The city council or school committee is required forthwith to reconsider that measure and unless it is wholly annulled or repealed, it must be submitted to the voters at the next general city election or at a special election, as the city council shall determine, and the measure thus challenged becomes null and void unless a majority of the qualified voters voting on the same at such election shall vote in favor thereof.

For discussion of the Initiative and Referendum in local government, see C. A. Beard, *American City Government: A*

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Survey of Newer Tendencies, The Century Company, New York, 1912; W. B. Munro, *The Government of American Cities*, The Macmillan Company, New York, 1912, especially "Direct Legislation and the Recall," 321–357; C. F. Taylor, "Municipal Initiative, Referendum and Recall in Practice," in *National Municipal Review*, III, 693 (October, 1914).

The October, 1916, issue of *Equity* is devoted entirely to the topic: "Municipal Efficiency under Popular Control," and presents a survey of the law and practice as to the Initiative and Referendum in the cities of every State in the Union.

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APPENDIX A.

CONSTITUTIONAL AND STATUTORY PROVISIONS RELATING TO THE STATE-WIDE INITIATIVE AND REFERENDUM.

STATE.	Constitution.	Statutes.
Arizona,	Const. 1912, art. 4, part 1.	– – –
Arkansas,	Const. (Amend. 1910), art. 5, sect. 1.	Acts of Ark., 1909, pp. 1238–1240. Public Acts, 1911, pp. 582–593.
California,	Const. (Amend. 1911), art. 4, sect. 1.	Statutes, 1911, pp. 1655–1659.
Colorado,	Const. (Amend. 1910), art. 5, sect. 1.	Session Laws, 1910, pp. 11–14.
Idaho,	Const. (Amend. 1912), art. 3, sect. 1.	Not put in force by Legislature.
Maine,	Const. (Amend. 1908), art. 4, part 1, sects. 1 and 16–22.	Resolves, 1907, ch. 121, pp. 1476–1481.
Michigan,	Const. 1908, art. 5, sect. 38, and art. 17, sects. 2 and 3. Amend. of art. 5, 1913.	– – –
Missouri,	Const. (Amend. 1908), art. 4, sect. 57.	Revised Statutes, 1909, vol. 2, ch. 59, sects. 6747–6756.
Mississippi,	Const. (Amend. 1914), sect. 33.	– – –
Montana,	Const. (Amend. 1906), art. 5, sect. 1.	Laws, 1907, ch. 62.
Nebraska,	Const. (Amend. 1912), art. 3, sects. 1–1*d* and 10.	General Election Laws, art. XIX (Laws, 1913, sects. 397–411.)
New Mexico,	Const. 1912, art. 4, sect. 1.	– – –
North Dakota,	Const. (Amend. 1914), arts. II, XV.	– – –
Ohio,	Const. (Amend. 1912), art. 2, sects. 1–1*g*.	Session Laws, 1914, p. 119. Session Laws, 1914–15, pp. 17, 295, 443.
Oklahoma,	Const. 1907, art. 5, sects. 1–4, 6–8; art. 24, sect. 3.	Comp. Laws, 1909, ch. 51, as amended by ch. 66, Laws, 1910, and by ch. 107, Sess. Laws, 1910–11.
Oregon,	Const. (Amend. 1902 and 1906), art. 4, sects. 1 and 1*a*; art. 17.	Laws, 1907, ch. 226. Laws, 1913, ch. 359; ch. 36. Laws, 1917, ch. 176, sect. 2.
South Dakota,	Const. (Amend. 1898), art. 3, sect. 1.	Session Laws, 1899, ch. 93 and 94; 1913, ch. 202. Comp. Laws, 1908, vol. 1, Pol. Code, sects. 21–28.
Utah,	Const. (Amend. 1900), art. 6, sects. 1 and 22.	Session Laws, 1917.
Washington,	Const. (Amend. 1912), art. 2, sect. 1.	Session Laws, 1915, ch. 54.
Maryland,	Const. (Amend. 1915), art. XVI.	– – –
Massachusetts,	Const. (Amend. 1913), Amend. XLII. and amendment of 1918.	– – –

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APPENDIX B.

TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS RELATING TO THE INITIATIVE AND REFERENDUM FROM TYPICAL STATES.

OREGON.

CONSTITUTIONAL PROVISIONS.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

§ *1. Legislative Authority — Style of Bill — Initiative and Referendum.* The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular general elections, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the state of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last

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preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

The above section is an amendment to the original constitution, and was adopted by the twentieth legislative assembly; adopted by the twenty-first legislative assembly: adopted by the people, by vote of 62,024 for, to 5,668 against it, June 2, 1902.

§ 1a. *Initiative and Referendum on Local, Special, and Municipal Laws and Parts of Laws.*

The referendum may be demanded by the people against one or more items, sections, or parts of any act of the legislative assembly in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this constitution are hereby further reserved to the legal voters of every municipality and district, as to all local, special, and municipal legislation, of every character, in or for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town.

The above section was proposed by initiative petition filed in the office of the secretary of state February 3, 1906, and adopted by vote of the people, 47,678 for, and 16,735 against, June 4, 1906. It went into effect by proclamation of the governor, issued June 25, 1906.

Article XVII.

Amendments.

§ 1. *Amendments to Constitution, How Made.*

Any amendment or amendments to this constitution may be proposed in either branch of the legislative assembly, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the secretary of state to the people for their approval or rejection, at the next regular general election, except when the legislative assembly shall order

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a special election for that purpose. If a majority of the electors voting on any such amendment shall vote in favor thereof, it shall thereby become a part of this constitution. The votes for and against such amendment or amendments, severally, whether proposed by the legislative assembly or by initiative petition, shall be canvassed by the secretary of state in the presence of the governor, and if it shall appear to the governor that the majority of the votes cast at said election on said amendment or amendments, severally, are cast in favor thereof, it shall be his duty forthwith after such canvass, by his proclamation, to declare the said amendment or amendments, severally, having received said majority of votes, to have been adopted by the people of Oregon as part of the constitution thereof, and the same shall be in effect as a part of the constitution from the date of such proclamation. When two or more amendments shall be submitted in the manner aforesaid to the voters of this state, at the same election, they shall be so submitted that each amendment shall be voted on separately. No convention shall be called to amend or propose amendments to this constitution, or to propose a new constitution, unless the law providing for such convention shall first be approved by the people on a referendum vote at a regular general election. This article shall not be construed to impair the right of the people to amend this constitution by vote upon an initiative petition therefor.

The above section, which takes the place of the original Sections 1 and 2, was proposed by initiative petition, filed in the office of the secretary of state February 3, 1906, and adopted by vote of the people, 47,661 for, and 18,751 against, June 4, 1906. It went into effect upon proclamation of the governor June 25, 1906.

STATUTORY PROVISIONS.

DIRECT LEGISLATION ELECTIONS.

§ 3470. *Form of Petition for Referendum.*

The following shall be substantially the form of petition for the referendum to the people on any act passed by the legislative assembly of the state of Oregon, or by a city council:

WARNING

It is a felony for any one to sign any initiative or referendum petition with any other name than his own, or to knowingly sign his more than once for the same measure, or to sign such petition when he is not a legal voter.

PETITION FOR REFERENDUM

To the Honorable ————, secretary of state for the state of Oregon (or to the Honorable ————, clerk, auditor or recorder, as the case may be, of the city of ————):

We, the undersigned citizens and legal voters of the state of Oregon (and the district of ————, county of ————, or city of ————, as the case may be), respectfully order that the senate (or house) bill No. ——, entitled (title of act, and

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if the petition is against less than the whole act then set forth here the part or parts on which the referendum is sought), passed by the ———— legislative assembly of the state of Oregon, at the regular (special) session of said legislative assembly, shall be referred to the people of the state (district of ————, county of ————, or city of ————, as the case may be), for their approval or rejection, at the regular (special) election to be held on the ———— day of ————, A. D. 19—, and each for himself says: I have personally signed this petition; I am a legal voter of the state of Oregon, and (district of————, county of ————, city of ————, as the case may be); my residence and postoffice are correctly written after my name.

Name ————————, Residence ————————, Postoffice ————————
(If in a city, street and number)
(Here follow twenty numbered lines for signatures)

§ 3471. *Form of Initiative Petition.*

The following shall be substantially the form of petition for any law, amendment to the constitution of the state of Oregon, city ordinance or amendment to a city charter, proposed by the initiative:

WARNING

It is a felony for any one to sign any initiative or referendum petition with any other name than his own, or to knowingly sign his name more than once for the same measure, or to sign such petition when he is not a legal voter.

INITIATIVE PETITION

To the Honorable ————, secretary of state for the state of Oregon (or to the Honorable ————, clerk, auditor or recorder, as the case may be, for the city of ————);

We, the undersigned citizens and legal voters of the state of Oregon (and of the district of ————, county of ————, or city of ————, as the case may be), respectfully demand that the following proposed law (or amendment to the constitution, ordinance, or amendment to the city charter, as the case may be), shall be submitted to the legal voters of the state of Oregon (district of ————, county of ————, or city of ————, as the case may be), for their approval or rejection at the regular general election, or (regular or special city election), to be held on the ———— day of ————, A. D. 19—, and each for himself says: I have personally signed this petition; I am a legal voter of the state of Oregon (and of the district of ————, county of ————, city of ————, as the case may be); my residence and postoffice are correctly written after my name.

Name ————————, Residence ————————, Postoffice ————————
(If in a city, street and number)
(Here follow twenty numbered lines for signatures)

§ 3472. *Further of Petitions — Filing and Procedure Thereon — Measures Excepted.*

Before or at the time of beginning to circulate any petition for the referendum to the people on any act passed by the legislative assembly of the state of Oregon, or for any law, amendment to the constitution of the state of Oregon, city ordinance or amendment to a city charter, proposed by the initiative, the person or persons or organization or organizations under whose authority the measure is to be referred or initiated

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shall send or deliver to the secretary of state, or city clerk, recorder or auditor, as the case may be, a copy of such petition duly signed which shall be filed by said officer in his office, who shall immediately examine the same and specify the form and kind and size of paper on which such petition shall be printed for circulation for signatures.

To every sheet of petitioners' signatures shall be attached a full and correct copy of the measure so proposed by initiative petition; but such petition may be filed by the secretary of state in numbered sections for convenience in handling. Each sheet of petitioners' signatures upon referendum petitions shall be attached to a full and correct copy of the measure on which referendum is demanded and may be filed in numbered sections in like manner as initiative petitions. Not more than twenty signatures on one sheet shall be counted. When any such initiative or referendum petition shall be offered for filing the secretary of state shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by initiative or referendum petitions; provided, all petitions for the initiative and for the referendum and sheets for signatures shall be printed on a good quality of bond or ledger paper on pages eight and a half inches in width by thirteen inches in length, with a margin of one and three-fourths inches at the top for binding; if the aforesaid sheets shall be too bulky for convenient binding in one volume, they may be bound in two or more volumes, those in each volume to be attached to a single printed copy of such measure. If any such measure shall, at the ensuing election, be approved by the people, then the copies thereof so preserved, with the sheets and signatures and affidavits, and a certified copy of the governor's proclamation declaring the same to have been approved by the people, shall be bound together in such form that they may be conveniently identified and preserved. The secretary of state shall cause every such measure so approved by the people to be printed with the general laws enacted by the next ensuing session of the legislative assembly, with the date of the governor's proclamation declaring the same to have been approved by the people. This act shall not apply to the general laws governing the method of determining whether stock of any kind shall be permitted to run at large in any county or portion thereof, nor to the provisions of the local option liquor laws providing methods of determining whether the sale of intoxicating liquors shall be prohibited in any county, city, precinct, ward or district. [L. 1913, Chap. 359, p. 743.]

§ 3473. *Verification of Petition.*

Each and every sheet of every such petition containing signatures shall be verified on the face thereof in substantially the following form by the person who circulated said sheet of said petition, by his or her affidavit thereon, and as a part thereof:

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State of Oregon,
County of ———— } ss.

I, ————, being first duly sworn, say: That every person who signed this sheet of the foregoing petition signed his or her name thereto in my presence; I believe that each has stated his or her name, postoffice address and residence correctly, and that each signer is a legal voter of the state of Oregon and county of————.

———— (Signature and postoffice address of affiant.)

Subscribed and sworn to before me this ——— day of ————, A. D. 19—.

(Signature and title of officer before whom oath is made and his postoffice address.)

In addition to said affidavit the county clerk of each county in which any such petition shall be signed shall compare the signatures of the electors signing the same with the signatures of the registration cards, books and blanks on file in his office, shall carefully examine said petition and shall attach to the sheets of said petition containing such signatures, his certificate to the secretary of state, substantially as follows:

State of Oregon,
County of ———— } ss.

To the Honorable ————, secretary of state of the state of Oregon:

I, county clerk of the county of ————, hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition attached hereto, with the signatures of said electors as they appear on the registration cards, books and blanks in my office, and from such information as I have been able to obtain I believe that the signatures of (names of signers) numbering (number of genuine signatures) are genuine. As to the remainder of the signatures thereon, I believe they are not genuine, except that the following names (————) do not appear on the registration cards, books and blanks in my office.

(Signed) ———— (County Clerk.)

(Seal of office) ————(Deputy.)

Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only such signatures on such petitions as shall be so certified by said county clerk to be genuine; provided, that the secretary of state shall consider and count such of the remaining signatures as shall be proved to be genuine signatures of legal voters. To establish such facts, the official certificate of a notary public of the county in which the signer resides shall be required as to the facts for each of such last-named signatures.

State of Oregon,
County of ———— } ss.

I, ————, a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: That I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition and I know of my own knowledge that they are legal voters of the state of Oregon and of the county written after their several names in the annexed petition, and that their residence and postoffice address is correctly stated therein, to wit: (Names of such electors.)

In testimony whereof I have hereunto set my hand and official seal this ——— day of ————, 19—.

———— (Notary Public for Oregon.)

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The county clerk shall not retain in his possession any such petition or any part thereof for a longer period than two days for the first 200 signatures thereon, and one additional day for each 200 additional signatures or fraction thereof, on the sheets presented to him, and at the expiration of such time he shall deliver the same to the person from whom he received it, with his certificate attached thereto as above provided. The forms herein given are not mandatory and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors. [L. 1913, Chap. 359, p. 744; L. 1917, Chap. 176, Sec. 1, pp. 228–230.]

§ 3474. Mandamus to Compel Filing — Jurisdiction and Procedure.

If the secretary of state shall refuse to accept and file any petition for the initiative or for the referendum any citizen may apply, within ten days after such refusal, to the circuit court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and numbers of such measure. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the supreme court within ten days after a decision is rendered. The circuit court of Marion county shall have jurisdiction in all cases of measures to be submitted to the electors of the state at large; in cases of local and special measures, the circuit court of the county, or of one of the counties in which such measures are to be voted upon, shall have jurisdiction; in cases of municipal legislation the circuit court of the county in which the city concerned is situated shall have jurisdiction.

§ 3475. Attorney General to Frame Ballot Title — Appeal.

When a copy of the petition for any measure to be referred to the people of the state, or of any county or district composed of one or more counties, either by the initiative or the referendum, shall be filed with the secretary of state, as provided in Section 3472, Lord's Oregon Laws as amended by Chapter 359, General Laws of Oregon of 1913, or when the submission to the people of any proposed constitutional amendment or measure shall be ordered by the legislative assembly, the secretary of state shall forthwith transmit two copies thereof to the attorney general of the state. Within ten days after receiving said copies the attorney general shall provide a ballot title therefor and return it to the secretary of state, together with the ballot title (for said measure) so prepared by him. A copy of the ballot title as prepared by the attorney general shall be furnished by the secretary of state with his approved form of any initiative

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or referendum petition, as provided in Section 3472, Lord's Oregon Laws, as amended, to the person or persons or organization or organizations under whose authority the measure is initiated or referred. Said ballot title shall be used and printed on the covers of the petition when in circulation, the short title shall be printed in type not less than twenty points on the covers of all such petitions circulated for signatures. The ballot title shall contain: (1) The name or names of the person or persons, organization or organizations under whose authority the measure is to be initiated or referred. (2) A distinctive short title not exceeding ten words by which the measure is commonly referred to or spoken of and which shall be printed in the foot margin of each signature sheet of the petition. (3) A general title which may be distinct from the legislative title of the measure, expressing in not more than one hundred words the purpose of the measure. The ballot title shall be printed with the numbers of the measure on the official ballot. In making such ballot title the attorney general shall to the best of his ability give a true and impartial statement of the purpose of the measure and in such language that the ballot title shall not be intentionally an argument or likely to create prejudice either for or against the measure. Any person who is dissatisfied with the ballot title or the short title provided by the attorney general for any measure, may appeal from the decision of the circuit court as provided by Section 3474 by petition, praying for a different title and setting forth the reason why the title prepared by the attorney general is insufficient or unfair. No appeal shall be allowed from the decision of the attorney general on a ballot title unless the same is taken within twenty days after said ballot title is filed in the office of the secretary of state. A copy of every such ballot title shall be served by the secretary of state or clerk of the court, upon the person offering or filing such initiative or referendum petition, or appeal. The service of such decision may be by mail or telegraph, and shall be made forthwith when it is received from the attorney general by the secretary of state. Said circuit court shall thereupon examine said measure, hear arguments, and in its decision thereon certify to the secretary of state a ballot title and a short title for the measure in accord with the intent of this section. The decision of the circuit court shall be final. The secretary of state shall print on the official ballot the titles thus certified to him. [L. 1913, Chap. 36, p. 67; L. 1917, Chap. 176, Sec. 2, pp. 230, 231.]

§ *3476. Designation and Numbering of Measures.*

The secretary of state, at the time he furnishes to the county clerks of the several counties certified copies of the names of the candidates for state and district offices, shall furnish to each of said county clerks his certified copy of the ballot titles and numbers of the several measures to be voted upon at the ensuing general election, and he shall use for each measure the ballot title designated in the manner herein provided. Such ballot title shall not resemble, so far as to probably create confusion, any

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such title previously filed for any measure to be submitted at that election; he shall number such measures and such ballot titles shall be printed on the official ballot in the order in which the acts referred by the legislative assembly and petitions by the people shall be filed in his office. The affirmative of the first measure shall be numbered 300 and the negative 301 in numerals, and the succeeding measures shall be numbered consecutively 302, 303, 304, 305, and so on, at each election. It shall be the duty of the several county clerks to print said ballot titles and numbers upon the official ballot in the order presented to them by the secretary of state and the relative position required by law. Measures referred by the legislative assembly shall be designated by the heading "Referred to the People by the Legislative Assembly;" measures referred by petition shall be designated "Referendum Ordered by Petition of the People;" measures proposed by initiative petition shall be designated and distinguished on the ballot by the heading "Proposed by Initiative Petition." [L. 1913, Chap. 359, p. 745.]

§ *3477. Manner of Voting — Result, How Determined.*

The manner of voting upon measures submitted to the people shall be the same as is now or may be required and provided by law; no measure shall be adopted unless it shall receive an affirmative majority of the total number of respective votes cast on such measure and entitled to be counted under the provisions of this act; that is to say, supposing 70,000 ballots to be properly marked on any measure, it shall not be adopted unless it shall receive more than 35,000 affirmative votes. If two or more conflicting laws shall be approved by the people at the same election, the law receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such law may not have received the greatest majority of affirmative votes. If two or more conflicting amendments to the constitution shall be approved by the people at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is conflict, even though such amendment may not have received the greatest majority of affirmative votes.

§ *3478. Measures and Arguments to Be Printed and Distributed.*

Not later than the ninetieth day before any regular general election, nor later than thirty days before any special election, at which any proposed law, part of an act or amendment to the constitution is to be submitted to the people, the secretary of state shall cause to be printed in pamphlet form a true copy of the title and text of each measure to be submitted, with the number and form in which the ballot title thereof will be printed on the official ballot. The person, committee or duly organized officers of any organization filing any petition for the initiative, but no other person or organization, shall have the right to file with the secretary

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of state for printing and distribution any argument advocating such measure; said argument shall be filed not later than the one hundred and fifteenth day before the regular election at which the measure is to be voted upon. Any person, committee or organization may file with the secretary of state, for printing and distribution, any arguments they may desire, opposing any measure, not later than the one hundred and fifth day immediately preceding such election. Arguments advocating or opposing any measure referred to the people by the legislative assembly, or by referendum petition, at a regular general election, shall be governed by the same rules as to time, but may be filed with the secretary of state by any person, committee or organization; in the case of measures submitted at a special election, all arguments in support of such measure at least sixty days before such election. But in every case the person or persons offering such arguments for printing and distribution shall pay to the secretary of state sufficient money to pay all the expenses for paper and printing to supply one copy with every copy of the measure to be printed by the state; and he shall forthwith notify the persons offering the same of the amount of money necessary. The secretary of state shall cause one copy of each of said arguments to be bound in the pamphlet copy of the measures to be submitted as herein provided, and all such measures and arguments to be submitted at one election shall be bound together in a single pamphlet. All the printing shall be done by the state, and the pages of said pamphlet shall be numbered consecutively from one to the end. The pages of said pamphlet shall be six by nine inches in size, and the printed matter therein shall be set in six-point Roman-faced solid type on not to exceed seven point body, in two columns of thirteen ems in width each to the page, with six-point dividing rule and with appropriate heads, and printed on a good quality of book paper twenty-five by thirty-eight inches, weighing not more than fifty pounds to the ream. The title page of every measure bound in said pamphlet shall show its ballot title and ballot number. The title page of each argument shall show the measure or measures it favors or opposes and by what persons or organization it is issued. When such arguments are printed he shall pay the state printer therefor from the money deposited with him and refund the surplus, if any, to the parties who paid it to him. The cost of printing, binding and distributing the measures proposed and of binding and distributing the arguments, shall be paid by the state as a part of the state printing, it being intended that only the cost of paper and printing the arguments shall be paid by the parties presenting the same, and they shall not be charged any higher rate for such work than is paid by the state for similar work and paper. Not later than the fifty-fifth day before the regular general election at which such measures are to be voted upon the secretary of state shall transmit by mail, with postage fully prepaid, to every voter in the state, whose address he may have, one copy of such pamphlet; provided, that if the secretary shall, at or about the same time be mailing any other pamphlet to every voter, he may, if practicable, bind the matter herein

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provided for in the first part of said pamphlet, numbering the pages of the entire pamphlet consecutively from one to the end, or he may enclose the pamphlets under one cover. In case of a special election he shall mail said pamphlet to every voter not less than twenty days before said special election. [L. 1913, Chap. 359, p. 745.]

§ 3479. Counting and Canvass — Proclamation of Result.

The votes on measures and questions shall be counted, canvassed and returned by the regular boards of judges, clerks and officers, as votes for candidates are counted, canvassed and returned, and the abstract made by the several county clerks of votes on measures shall be returned to the secretary of state on separate abstract sheets, in the manner provided by Section 3419, for abstracts of votes for state and county officers. It shall be the duty of the secretary of state in the presence of the governor, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for each measure, and the governor shall forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and question, and declaring such measures as are approved by majority of those voting thereon to be in full force and effect as the law of the state of Oregon from the date of said proclamation; provided, that if two or more measures shall be approved at said election which are known to conflict with each other or to contain conflicting provisions he shall also proclaim which is paramount in accordance with the provisions of Section 3477.

§ 3480. Procedure in Cities and Towns.

In all cities and towns which have not or may not provide by ordinance or charter for the manner of exercising the initiative and referendum powers reserved by the constitution to the people thereof, as to their municipal legislation, the duties required of the secretary of state by this act, as to state legislation, shall be performed as to such municipal legislation by the city auditor, clerk or recorder, as the case may be; the duties required by the governor shall be performed by the mayor as to such municipal legislation, and the duties required by this act of the attorney general shall be performed by the city attorney as to such municipal legislation. The provisions of this act shall apply in every city and town in all matters concerning the operation of the initiative and referendum in its municipal legislation on which such city or town has not made or does not make conflicting provisions. The printing and binding of measures and arguments in municipal legislation shall be paid for by the city in like manner as payment is provided for by the state as to state legislation by Section 3478, and said printing shall be done in the same manner that other municipal printing is done; distribution of said pamphlets shall be made to every voter in the city, so far as possible, by the city clerk, auditor or recorder, as the case may be, either by mail or carrier, not less

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than eight days before the election at which the measures are to be voted upon. Arguments supporting municipal measures shall be filed with the city clerk, auditor or recorder, not less than thirty days before the election at which they are to be voted upon; opposing arguments shall be filed not less than twenty days before said election. It is intended to make the procedure in municipal legislation as nearly as practicable the same as the initiative and referendum procedure for measures relating to the people of the state at large.

§ *3481. Signatures Required on Referendum — When City Registration to Take Effect.*

Referendum petitions against any ordinance, franchise or resolution passed by a city council shall be signed by not less than ten per cent of the voters of said city, and said signatures shall be verified in the manner herein provided; the petition shall be filed with the city clerk, auditor, or recorder, as the case may be, within thirty days after the passage of such ordinance, resolutions or franchise. No city ordinance, resolution, or franchise shall take effect and become operative until thirty days after its passage by the council and approved by the mayor, unless the same shall be passed over his veto, and in that case it shall not take effect and become operative until thirty days after such final passage, except measures necessary for the immediate preservation of the peace, health or safety of the city; and no such emergency measure shall become immediately operative unless it shall state in a separate section the reasons why it is necessary that it should become immediately operative, and shall be approved by the affirmative vote of three-fourths of all the members elected to the city council, taken by ayes and noes, and also approved by the mayor.

§ *3482. Initiative Measures in Cities.*

If any ordinance, charter or amendment to the charter to any city shall be proposed by initiative petition, said petition shall be filed with the city clerk, auditor or recorder, as the case may be, and he shall transmit it to the next session of the city council. The council shall either ordain or reject the same, as proposed, within thirty days thereafter, and if the council shall reject said proposed ordinance or amendment, or shall take no action thereon, then the city clerk, auditor or recorder, as the case may be, shall submit the same to the voters of the city or town at the next ensuing election held therein not less than ninety days after the same was first presented to the city council. The council may ordain said ordinance or amendment and refer it to the people, or it may ordain such ordinance without referring it to the people, and in that case it shall be subject to referendum petition in like manner as other ordinances; if the council shall reject said ordinance or amendment, or take no action thereon, it may ordain a competing ordinance or amendment, which shall be submitted by the city clerk, auditor or recorder, as the case may be, to the

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people of said city or town, at the same election at which said initiative proposal is submitted. Such competing ordinance or amendment, if any, shall be prepared by the council and ordained within thirty days allowed for its action on the measure proposed by initiative petition. The mayor shall not have power to veto either of such measures. If conflicting ordinances or charter amendments shall be submitted to the people at the same election, and two or more of such conflicting measures shall be approved by the people, then the measure which shall have received the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such measure may not have received the greatest majority. Amendments to any city charter may be proposed and submitted to the people by the city council, with or without an initiative petition, but the same shall be filed with the city clerk for submission not less than sixty days before the election at which they are to be voted upon, and no amendment of a city charter shall be effective until it is approved by a majority of the votes cast thereon by the people of the city or town to which it applies. The city council may by ordinance order special elections to vote on municipal measures.

§ *3483. Qualifications of Signers of Petitions — Penalties.*

Every person who is a qualified elector of the state of Oregon may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the same measure at one election, or who is not at the time of signing the same a legal voter of this state, or any officer or person wilfully violating any provision of this statute, shall, upon conviction thereof, be punished by a fine not exceeding $500.00, or by imprisonment in the penitentiary not exceeding two years, or by both such fine and imprisonment, in the discretion of the court before which such conviction shall be had.

§ *3484. Referendum on Laws Affecting County or District.*

That any law enacted by the legislative assembly, relating only to any county or district in the state of Oregon, other than municipal corporations, may be referred to the people of such county or district for their approval or rejection in the same manner as now or hereafter provided by law for the reference of general laws to the people of the entire state, excepting that when any law relates only to one county the county clerk shall be substituted for the secretary of state, the district attorney for the attorney general, and the county judge for the governor. When any law affects any district consisting of more than one county, it shall be referred in the manner provided for the reference of acts affecting the entire state, except that the petition therefor shall be signed only by the voters of

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such district, and in both counties and districts the percentage shall be computed on the vote at the preceding election in such county or district for supreme judge.

§ *3485. Secretary of State to Be Notified and Result Certified to Him.*

When any petition for the referendum is filed with any county clerk, he shall notify the secretary of state, by registered letter, of that fact, and when the election thereon has been held, and the vote thereon canvassed, he shall certify the result to the secretary of state in like manner.

CALIFORNIA.

CONSTITUTIONAL PROVISIONS.

[Article IV, Section 1, of the Constitution, as amended October 10, 1911.]

The legislative power of this state shall be vested in a senate and assembly which shall be designated "The Legislature of the State of California," but the people reserve to themselves the power to propose laws and amendments to the constitution, and to adopt or reject the same, at the polls independent of the legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the legislature. The enacting clause of every law shall be "The people of the State of California do enact as follows:".

The first power reserved to the people shall be known as the initiative. Upon the presentation to the secretary of state of a petition certified as herein provided to have been signed by qualified electors, equal in number to eight per cent of all the votes cast for all candidates for governor at the last preceding general election, at which a governor was elected, proposing a law or amendment to the constitution, set forth in full in said petition, the secretary of state shall submit the said proposed law or amendment to the constitution to the electors at the next succeeding general election occurring subsequent to ninety days after the presentation aforesaid of said petition, or at any special election called by the governor in his discretion prior to such general election. All such initiative petitions shall have printed across the top thereof in twelve point blackface type the following: "Initiative measure to be submitted directly to the electors."

Upon the presentation to the secretary of state, at any time not less than ten days before the commencement of any regular session of the legislature, of a petition certified as herein provided to have been signed by qualified electors of the state equal in number to five per cent of all the votes cast for all candidates for governor at the last preceding general election, at which a governor was elected, proposing a law set forth in full in said petition, the secretary of state shall transmit the same to the legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected without change or amend-

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ment by the legislature, within forty days from the time it is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the legislature, within said forty days, the secretary of state shall submit it to the people for approval or rejection at the next ensuing general election. The legislature may reject any measure so proposed by initiative petition and propose a different one on the same subject by a yea and nay vote upon separate roll call, and in such event both measures shall be submitted by the secretary of state to the electors for approval or rejection at the next ensuing general election or at a prior special election called by the governor, in his discretion, for such purpose. All said initiative petitions last above described shall have printed in twelve point black-face type the following: "Initiative measure to be presented to the legislature."

The second power reserved to the people shall be known as the referendum. No act passed by the legislature shall go into effect until ninety days after the final adjournment of the session of the legislature which passed such act, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the state, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all the members elected to each house. Whenever it is deemed necessary for the immediate preservation of the public peace, health or safety that a law shall go into immediate effect, a statement of the facts constituting such necessity shall be set forth in one section of the act, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon; *provided, however*, that no measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be construed to be an urgency measure. Any law so passed by the legislature and declared to be an urgency measure shall go into immediate effect.

Upon the presentation to the secretary of state within ninety days after the final adjournment of the legislature of a petition certified as herein provided to have been signed by qualified electors equal in number to five per cent of all the votes cast for all candidates for governor at the last preceding general election at which a governor was elected, asking that any act or section or part of any act of the legislature be submitted to the electors for their approval or rejection, the secretary of state shall submit to the electors for their approval or rejection, such act, or section or part of such act at the next succeeding general election occurring at any time subsequent to thirty days after the filing of said petition or at any special election which may be called by the governor, in his discretion, prior to such regular election, and no such act or section or part of such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon; but if a referendum petition is filed

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against any section or part of any act the remainder of such act shall not be delayed from going into effect.

Any act, law or amendment to the constitution submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, shall take effect five days after the date of the official declaration of the vote by the secretary of state. No act, law or amendment to the constitution, initiated or adopted by the people, shall be subject to the veto power of the governor, and no act, law or amendment to the constitution, adopted by the people at the polls under the initiative provisions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure; but acts and laws adopted by the people under the referendum provisions of this section may be amended by the legislature at any subsequent session thereof. If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail. Until otherwise provided by law, all measures submitted to a vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by the proponents and opponents thereof, shall be mailed to each elector in the same manner as now provided by law as to amendments to the constitution, proposed by the legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the senate.

If for any reason any initiative or referendum measure, proposed by petition as herein provided, be not submitted at the election specified in this section, such failure shall not prevent its submission at a succeeding general election, and no law or amendment to the constitution, proposed by the legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed, as herein provided.

Any initiative or referendum petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure. Each signer shall add to his signature his place of residence, giving the street and number if such exist. His election precinct shall also appear on the paper after his name. The number of signatures attached to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the state shall be competent to solicit said signatures within the county or city and county of which he is an elector. Each section of the petition shall bear the name of the county or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name

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it purports to be, and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer oaths. Such petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors. Unless and until it be otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified electors.

Each section of the petition shall be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all said sections circulated in any county or city and county shall be filed at the same time. Within twenty days after the filing of such petition in his office the said clerk, or registrar of voters, shall determine from the records of registration what number of qualified electors have signed the same, and if necessary the board of supervisors shall allow said clerk or registrar additional assistants for the purpose of examining such petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to said petition, except the signatures thereto appended, his certificate, properly dated, showing the result of said examination and shall forthwith transmit said petition, together with his said certificate, to the secretary of state and also file a copy of said certificate in his office. Within forty days from the transmission of the said petition and certificate by the clerk or registrar to the secretary of state, a supplemental petition identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid. The clerk or registrar of voters shall within ten days after the filing of such supplemental petition make like examination thereof, as of the original petition, and upon the completion of such examination shall forthwith attach to said petition his certificate, properly dated, showing the result of said examination, and shall forthwith transmit a copy of said supplemental petition, except the signatures thereto appended, together with his certificate, to the secretary of state.

When the secretary of state shall have received from one or more county clerks or registrars of voters a petition certified as herein provided to have been signed by the requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the state his certificate showing such fact. A petition shall be deemed to be filed with the secretary of state upon the date of the receipt by him of a certificate or certificates showing said petition to be signed by the requisite number of electors of the state. Any county clerk or registrar of voters shall, upon receipt of such copy, file the same for record in his office. The duties herein imposed upon the clerk or registrar of voters shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.

The initiative and referendum powers of the people are hereby further reserved to the electors of each county, city and county, city and town

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of the state, to be exercised under such procedure as may be provided by law. Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising the initiative and referendum powers herein reserved to such counties, cities and counties, cities and towns, but shall not require more than fifteen per cent of the electors thereof to propose any initiative measure nor more than ten per cent of the electors thereof to order the referendum. Nothing contained in this section shall be construed as affecting or limiting the present or future powers of cities or cities and counties having charters adopted under the provisions of section eight of article eleven of this constitution. In the submission to the electors of any measure under this section, all officers shall be guided by the general laws of this state, except as is herein otherwise provided. This section is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting either the provisions of this section or the powers herein reserved.

STATUTORY PROVISIONS.

Attorney-General to prepare Title and Summary for Initiative Measures.

[Political Code, Section 1197*a*, adopted 1915—Chapter 42, Statutes of 1915.]

It shall be the duty of the proponents of any initiative measure relating to the constitution or the laws of the State of California, prior to circulating any petition for signatures thereon, to submit a draft of said petition to the attorney general with a request that he prepare a title, and summary of the chief purposes and points of said proposed measure. Such title and summary shall forthwith be prepared in the manner provided for the preparation of ballot titles in paragraph three of section one thousand one hundred ninety-seven of the Political Code. Said title and summary shall not exceed one hundred words in all.

Heading on Each Page of Petition.

[Political Code, Section 1197*b*, adopted 1915—Chapter 42, Statutes of 1915.]

The proponents of any proposed initiative measure shall place upon each section of the petition in relation thereto above the text of the measure the title and summary referred to in section one thousand one hundred ninety-seven *a* of the Political Code not exceeding one hundred words in all. Across the top of each page of any petition asking that any act or section, or part of any act of the legislature be submitted to the electors for their approval or rejection, there shall be printed in twelve-point blackface type the following:

"*Referendum against An Act passed by the Legislature.*"

Across the top of each page after the first page of every initiative, referendum or recall petition or section thereof which may be prepared

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and circulated in accordance with law there shall be printed in eighteen-point gothic type a short title, in not to exceed twenty words, showing the nature of the petition and the subject to which it relates.

No officer chargeable by law with receiving or filing in his office any initiative, referendum or recall petition shall receive or file any such petition which does not conform with the provisions of this section. This section shall apply only to initiative, referendum and recall measures affecting the constitution or laws of the state, or state officers.

Co-operation in Preparation of Initiative Measures by Chief of Legislative Counsel Bureau.

[Chapter 41, Statutes of 1915.]

. . . It shall also be the duty of the chief of the legislative counsel bureau, whenever in his judgment there is reasonable probability that an initiative measure will be submitted to the voters of the State of California under the laws of the state relating to the submission of measures by initiative, to co-operate with the proponents of said measure in the preparation of said law when requested in writing so to do by twenty-five or more electors proposing such a measure.

Who qualified to sign Petition.

[Political Code, Section 1083*a*, as amended by Chapter 138, Statutes of 1915.]

Wherever, by the constitution or laws of this state, any initiative, referendum, recall or nominating petition or paper, or any petition or paper, is required to be signed by qualified electors, only an elector who is a registered qualified elector at the time he signs such petition or paper shall be entitled to sign the same, and no elector shall be entitled to sign any such petition or paper on or after the first day of January of an even-numbered year unless he shall, on or since said first day of January, have made an affidavit of registration as required by law. Such signer shall at the time of so signing such petition or paper affix thereto the date of such signing. Wherever, by the constitution or laws of this state, the county clerk or registrar of voters is required to determine from the records of registration what number of qualified electors have signed such petition or paper, he shall determine that fact with respect to the purported signature of any person from the affidavit of registration, and records relating thereto, current and in effect at the date of such signing of such petition or paper.

Penalty for signing Fictitious Name or Name of Another.

[Penal Code, Section 472*a*, adopted 1915—Chapter 43, Statutes of 1915.]

Every person who subscribes to any initiative, referendum or recall petition or to any nominating petition a fictitious name, or who subscribes thereto the name of another, is guilty of a felony and is punishable by imprisonment in the state prison for not less than one nor more than fourteen years.

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PENALTY FOR MISREPRESENTATION AS TO PETITIONS, FOR UNLAWFUL CIRCULATION AND FILING THEREOF, FOR SIGNING SUCH PETITION MORE THAN ONCE, ETC.

[Penal Code, Section 64*b*, adopted 1915—Chapter 49, Statutes of 1915.]

1. It shall be unlawful for any person circulating, as principal or agent, or having charge or control of the circulation of, or obtaining signatures to, any petition authorized or provided for by the constitution or laws of the State of California regulating the initiative, referendum or recall to misrepresent or make any false statement concerning the contents, purport or effect of any such petition to any person who signs, or who desires to sign, or who is requested to sign, or who makes inquiries with reference to any such petition, or to whom any such petition is presented for his or her signature.

2. It shall be unlawful for any person to wilfully or knowingly circulate, publish or exhibit any false statement or misrepresentation concerning the contents, purport or effect of any petition mentioned in this section for the purpose of obtaining any signature to any such petition or for the purpose of persuading any person to sign any such petition.

3. It shall be unlawful for any person to file in the office of the clerk or other officer provided by law to receive such filing, any petition mentioned in this section to which is attached, appended or subscribed any signature which the person so filing such petition knows to be false or fraudulent or not the genuine signature of the person purporting to sign such petition or whose name is attached, appended or subscribed thereto.

4. It shall be unlawful for any person to circulate, or cause to be circulated, any petition mentioned in this section, knowing the same to contain false, forged or fictitious names.

5. It shall be unlawful for any person to make any false affidavit concerning any petition mentioned in this section or the signatures appended thereto.

6. It shall be unlawful for any public official or employee knowingly to make any false return, certification or affidavit, concerning any petition mentioned in this section, or the signatures appended thereto.

7. It shall be unlawful for any person to knowingly sign his own name more than once to any petition mentioned in this act, or to sign his name to any such petition knowing himself at the time of such signing not to be qualified to sign the same.

8. Any person, either as principal or agent, violating any of the provisions of this section is punishable by imprisonment in the state prison, or in a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both.

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Printing of Pamphlets.

[Political Code, Section 1195a, as amended by Chapter 540, Statutes of 1915.]

The secretary of state shall cause to be printed at the state printing office one and one-fifth times as many pamphlets as there are registered voters in the state. Such pamphlets shall contain a complete copy of all constitutional amendments, propositions and measures submitted to a vote of the electors of the state by the legislature, or by initiative or referendum petition, a copy of the corresponding constitutional or statutory provisions as then in force, if any, and a copy of the statements provided for in section one thousand one hundred ninety-five in this code and in section one, article four of the constitution of the State of California. The parts of the proposed amendments differing from the existing provisions shall therein be distinguished in print, so as to facilitate comparison. All questions, propositions, measures and constitutional amendments which are to be submitted to a vote of the electors shall be printed in said pamphlets, so far as possible, in the same order, manner and form in which the same shall be designated upon the ballot and shall be designated thereon by the respective ballot titles or designations which may be provided therefor. Said ballot titles shall be numbered consecutively and printed on the pamphlets herein referred to immediately prior to the particular question, proposition, measure or constitutional amendment therein referred to. There shall also be printed on said pamphlets the copy of said ballot title or designation as the same will appear on the ballots when voted on in the order and with the proper number which ballot title or designation shall be the method by which said questions, propositions and constitutional amendments shall be designated on the ballots.

Distribution of Pamphlets.

[Political Code, Section 1195b, adopted in 1915—Chapter 540, Statutes of 1915.]

The secretary of state shall duly, and not less than thirty days before the election next ensuant at which such amendments, propositions, measures or questions are to be voted on, certify such pamphlet and the matters contained therein and furnish each county clerk in the state with one and one-fifth times as many copies of such pamphlets as there are registered voters in his county. The clerk of each county shall not more than twenty-five days, nor less than fifteen days prior to said election, cause to be mailed to each voter a copy of such pamphlet and no other publication of such amendments, propositions, measures, questions or statements shall be necessary or authorized. Three copies of such pamphlets, to be supplied by the secretary of state, shall be kept at every polling place, while an election is in progress, so that they may be freely consulted by the electors.

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PRESERVATION OF PETITIONS.

[Political Code, Section 1194, adopted 1915—Chapter 152, Statutes of 1915.]

The secretary of state shall preserve for a period of four years in his office all initiative, referendum and recall petitions filed therein under the provisions of law and shall thereafter destroy the same unless they have been introduced in evidence in some action or proceeding then pending.

ARIZONA.

CONSTITUTIONAL PROVISIONS.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

1. Initiative and Referendum.

SEC. 1. (1) The legislative authority of the state shall be vested in a Legislature, consisting of a Senate and a House of Representatives, but the people reserve the power to propose laws and amendments to the Constitution and to enact or reject such laws and amendments at the polls, independently of the Legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any Act, or item, section, or part of any Act, of the Legislature.

(2) The first of these reserved powers is the Initiative. Under this power ten per centum of the qualified electors shall have the right to propose any measure, and fifteen per centum shall have the right to propose any amendment to the Constitution.

(3) The second of these reserved powers is the Referendum. Under this power the Legislature, or five per centum of the qualified electors, may order the submission to the people at the polls of any measure, or item, section, or part of any measure, enacted by the Legislature, except laws immediately necessary for the preservation of the public peace, health, or safety, or for the support and maintenance of the departments of the State Government and State institutions, . . .

STATUTORY PROVISIONS.

REVISED STATUTES, 1913.

TITLE XXII.

CHAPTER I. — INITIATIVE AND REFERENDUM.

(Chapter 12, Laws 1913, Third Special Session.)

3323. The following shall be substantially the form of petition for referring to the people under the use of the referendum by petition any measure or item, section, or part of any measure enacted by the legislature of the state of Arizona, or by the legislative body of any incorporated city, town or county.

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WARNING.

It is a felony for any one to sign any initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the same measure, or knowingly to sign such petition when he is not a qualified elector.

PETITION FOR REFERENDUM.

To the Honorable....., Secretary of State for the state of Arizona (or to the clerk of the board of supervisors, city clerk, or corresponding officer, in the case of petitions for or on local county, city, or town measures):

We, the undersigned citizens and qualified electors of the state of Arizona, respectfully order that the senate (or house) bill No..... or other local county, city, or town measure, entitled (title of act or ordinance, and if the petition is against less than the whole act or ordinance then set forth here the item, section, or part, of any measure on which the referendum is used), passed by the .....session of said legislature of the state of Arizona, at the general (or special, as the case may be) session of said legislature (or by county, city or town legislative body) shall be referred to a vote of the qualified electors of the state (county, city or town) for their approval or rejection at the next regular general election (or city or town election) and each for himself says: I have personally signed this petition; I have not signed any other petition for the same measure; I am a qualified elector for the state of Arizona, county of (or city and county of, as the case may be,)..... and my place of residence (including street and number, if such exist,) is correctly written after my name.

1. Name.....; Residence.....; Post Office.....; Date.....

(If in a city, street and number.)

(Here follow twenty numbered lines for signatures.)

3324. The following shall be substantially the form of petition for any law or amendment to the constitution of the state of Arizona, or county legislative measure or city ordinance or amendment to a city charter proposed by the initiative to be submitted directly to the electors:

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE ELECTORS.

(In twelve point black face type.)

WARNING.

It is a felony for any one to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the same measure, or proposed constitutional amendment, or knowingly to sign such petition when he is not a qualified elector.

INITIATIVE PETITION.

To the Honorable....., Secretary of State for the state of Arizona (or to the clerk of the board of supervisors, city clerk, or corresponding officer, in the case of petitions for or on local county, city, or town measures):

We, the undersigned citizens and qualified electors of the state of Arizona, respectfully demand that the following proposed law (or amendment of the constitution, or other initiative measure, as the case may be) shall be submitted to the qualified electors of the state of Arizona (county, city, or town of.....) for their approval or rejection at the next regular general election (or county, city,

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or town election), and each for himself says: I have personally signed this petition; I have not signed any other petition for the same measure; I am a qualified elector of the state of Arizona, county of (or city, town or county of, as the case may be) .....; and my place of residence (including street and number, if they exist) is correctly written after my name.

1. Name.....; Residence.....; Post Office.....; Date.....

(If in a city, street and number.)

(Here follow twenty numbered lines for signatures.)

3325. Every such sheet for petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure, or proposed amendment to the constitution, so proposed by the initiative petition; but such petition may be filed with the secretary of state in numbered sections for convenience in handling, and referendum petitions shall be attached to a full and correct copy of the title and text of the measure on which the referendum is used and may be filed in numbered sections in like manner. Not more than twenty signatures on one sheet shall be counted. When any such initiative or referendum petition shall be offered for filing, the secretary of state, in the presence of the governor and the person offering the same for filing, shall detach the sheets containing the signatures and affidavits and cause them all to be attached to one or more printed copies of the measure so proposed by the initiative, or item, section, measure or part of any measure on which a referendum petition is filed; provided, that all petitions for the initiative and for the referendum and sheets for signatures shall be printed on pages seven inches in width by ten inches in length, with a margin of one and three-fourths inches at the top for binding; if the aforesaid sheets shall be too bulky for convenient binding in one volume, they may be bound in two or more volumes, those in each volume to be attached to a single printed copy of such measure, or proposed amendment to the constitution; the detached copies of such measure, or proposed constitutional amendment, shall be delivered to the person offering the same for filing. If any such measure or proposed constitutional amendment shall, at the ensuing election, be approved by the people, then the copies thereof so preserved, with the sheets and signatures and affidavits, and a certified copy of the governor's proclamation declaring the same to have been approved by the people, shall be bound together in such form that they may be conveniently identified and preserved. The secretary of state shall cause every measure or constitutional amendment submitted under the powers of the initiative, so approved by the people, to be printed with the general laws enacted by the next ensuing session of the legislature, with the date of the governor's proclamation declaring the same to have been approved by the people.

3326. Each and every sheet of every petition containing signatures shall be verified on the back thereof, in substantially the following form, by the person who circulated said sheet of said petition, by his or her affidavit thereon as a part thereof:

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State of Arisona, } ss:
County of..... }

I, ..., being first duly sworn say: (here shall be legibly written or typewritten the names of the signers of the sheet) signed this sheet of the foregoing petition, in my presence, and each of them, signed his name thereto in my presence; I believe that each has stated his name, post office address, and residence correctly, and that each signer is a qualified elector of the state of Arisona and county of..... (or of the city of..... .....as the case may be).

(Signature and post office address of affiant.)

Subscribed and sworn to before me this.....day of.....19.....

(Signature and title of officer before whom oath is made, and his post-office address.)

The forms herein given are not mandatory, and if substantially followed in any petition it shall be sufficient, disregarding clerical and merely technical errors.

3327. If the secretary of state shall refuse to accept and file any petition for the initiative if presented not less than four calendar months preceding the date of the election at which the measures or proposed constitutional amendments so proposed are to be voted upon, or for the referendum if filed not more than ninety days after the final adjournment of the session of the legislature which shall have passed the measure to which the referendum is applied, any citizen may apply, within ten days after such refusal, to the superior court for a writ of mandamus to compel him to do so. If it shall be decided by the court that such petition is legally sufficient, the secretary of state shall then file it, with a certified copy of the judgment attached thereto, as of the date on which it was originally offered for filing in his office. On a showing that any petition filed is not legally sufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election the ballot title and number of the measure or proposed amendment to the constitution set forth in such petition. All such suits shall be advanced on the court docket and heard and decided by the court as quickly as possible. Either party may appeal to the supreme court within ten days after the decision is rendered. The superior court of Maricopa county shall have jurisdiction in all cases of measures or proposed constitutional amendments to be submitted to the electors of the state at large; in cases of local and special measures, the superior court of the county, or of one of the counties in which such measures are to be voted upon, shall have jurisdiction; in case of municipal legislation, the superior court of the county in which the city concerned is situated shall have jurisdiction.

3328. When any initiative or referendum petition or any measure or amendment to the constitution referred to the people by the legislature shall be regularly and legally filed, with the secretary of state, he shall cause to be printed on the official ballot at the next regular general election the title and number of said measure or proposed constitutional

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amendment, together with the words "Yes" and "No" in such manner that the electors may express at the polls their approval or disapproval of the measure or proposed amendment.

3329. The secretary of state at the time he furnishes to the clerks of the boards of supervisors of the several counties certified copies of the names of the candidates for state and other offices, shall furnish to each of said clerks his certified copy of the titles and numbers of the several measures and proposed amendments to the constitution to be voted upon at the ensuing regular general election. The affirmative of the first measure shall be numbered 300, and the negative 301 in numerals, and the succeeding measures shall be numbered consecutively 302, 303, 304, 305, and so on, at each election. Proposed constitutional amendments shall be similarly numbered beginning with the number 101. Proposed constitutional amendments shall be placed by themselves at the head of the ballot column, followed by the measures referred. It shall be the duty of the several clerks to have printed said titles and numbers upon the official ballot in the order presented to them by the secretary of state and in the relative positions required by law. Proposed constitutional amendments shall be designated "Proposed amendments to the constitution." Said amendments shall be divided into two subdivisions designated and arranged respectively as "a" Proposed by the Legislature, and "b" Proposed by Initiative. Measures referred by the legislature shall be designated by the heading "Referred to the people by the legislature;" measures referred by petition shall be designated "Referendum ordered by petition of the people;" measures proposed by initiative petition shall be designated and distinguished on the ballot by the heading "Proposed by initiative petition."

Whenever any act is referred to a vote of the people by direction of the legislature, or by referendum petition, there shall be printed on the official ballot in one line immediately after the title of each measure submitted as herein provided the following:

If you favor the above law, vote YES; if opposed, vote NO.

3331. The manner of voting upon measures and proposed constitutional amendments submitted to the people shall be the same as is now or may be required and provided by law; no measure or proposed amendment to the constitution shall be adopted unless it shall receive an affirmative majority of the total number of respective votes cast on such measure and entitled to be counted under the provisions of this title; that is to say, supposing forty thousand ballots to be properly marked on any measure, it shall not be adopted unless it shall receive more than twenty thousand affirmative votes. If two or more conflicting laws or proposed constitutional amendments shall be approved by the people at the same election, the law or proposed amendments receiving the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such law may not have received

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the greatest majority of affirmative votes. If two or more conflicting amendments to the constitution shall be approved by the people at the same election, the amendment which receives the greatest number of affirmative votes shall be paramount in all particulars as to which there is a conflict, even though such amendment may not have received the greatest majority of affirmative votes.

3332. Not later than the first Monday of the third month next before any regular general election, nor later than thirty days before any special election, at which any proposed law, part of an act, or amendment to the constitution is to be submitted to the people, the secretary of state shall, unless a special session of a legislature adjourn at such a time as to render it impossible so to do, cause to be printed in pamphlet form a true copy of the title and text of each proposed constitutional amendment and measure to be submitted, with the number and form in which the ballot title thereof will be printed on the official ballot. In case a special session adjourns at such a time as to render the above impossible, the secretary of state shall proceed with such dispatch as he may be able, and in the spirit of this section. The person, committee, or duly authorized officers of any organization, filing any petition under the initiative, but no other person or organization, shall have the right to file with the secretary of state for printing and distribution any argument advocating the measure or proposed constitutional amendment set forth in such petition; said argument shall be filed not later than the first Monday of the fourth month before the regular election at which the measure is to be voted upon. Any person, committee or organization may file with the secretary of state, for printing and distribution, any arguments they may desire, opposing any measure, or proposed constitutional amendment, not later than the fourth Monday of the fourth month immediately preceding such election. Arguments advocating or opposing any measures referred to the people by the legislature, or by referendum petition, at a regular general election, shall be governed by the same rules as to time, but may be filed with the secretary of state by any person, committee or organization; in the case of measures or proposed constitutional amendments submitted at a special election, all arguments in support of such measure or proposed amendment must be filed at least sixty days before such election. But in every case the person or persons offering such arguments for printing and distribution shall pay to the secretary of state sufficient money to pay all the expenses for paper and printing to supply one copy with every copy of the measure or proposed constitutional amendment to be printed by the state; and he shall forthwith notify the persons offering the same of the amount of money necessary. The secretary of state shall cause one copy of each of said arguments to be bound in the pamphlet copy of the measures and proposed constitutional amendments to be submitted as herein provided and all such measures and proposed constitutional amendments and argu-

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ments to be submitted at one election shall be bound together in a single pamphlet. All the printing shall be done at the expense of the state, and the pages of said pamphlet shall be numbered consecutively from one to the end. The pages of said pamphlet shall be six by nine inches in size, and the printed matter thereon shall be set in eight point Roman faced type, single leaded, and twenty-five ems in width, with appropriate heads, and printed on sized and super calendered paper twenty-five by thirty-eight inches, weighing fifty pounds to the ream. The title page of every measure and proposed constitutional amendment bound in said pamphlet shall show its ballot title and ballot numbers. The title page of each argument shall show the measure or measures or proposed constitutional amendments it favors or opposes and by what persons or organizations it is issued. When such arguments are printed, the secretary of state shall pay therefor from the money deposited with him and refund the surplus, if any, to the parties who paid it to him. The cost of printing, binding, and distributing the measures and proposed constitutional amendments proposed, and of binding and distributing the arguments, shall be paid by the state as a part of the state printing, it being intended that only the cost of the paper and printing the arguments shall be paid by the parties presenting the same, and they shall not be charged any higher rate for such work than is paid by the state for similar work and paper. Not later than the fifty-fifth day before the regular general election at which the measures or proposed constitutional amendments are to be voted upon the secretary of state shall transmit by mail, with postage fully prepaid, to every voter in the state whose address he may have one copy of such pamphlet, and shall continue mailing the pamphlets as rapidly thereafter as the names are received from the county recorders of the different counties of the state, until all registered voters have been supplied with a copy of the publicity pamphlet; provided that if the secretary shall, at or about the same time, be mailing any other pamphlet to every voter, he may, if practicable, bind the matter herein provided for in the first part of said pamphlet, numbering the pages of the entire pamphlet, consecutively from one to the end, or he may enclose the pamphlets under one cover. In the case of a special election he shall mail said pamphlet to every voter not less than twenty days before said special election.

3333. The votes on measures and proposed constitutional amendments shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed and returned, and the abstract made by the clerks of the boards of supervisors of the several counties of votes on measures and proposed constitutional amendments shall be returned to the secretary of state on separate abstract sheets, in the manner provided by law. It shall be the duty of the secretary of state, in the presence of the governor and the chief justice of the supreme court, to proceed within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for each measure and proposed constitutional amendment; and the governor shall

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forthwith issue his proclamation, giving the whole number of votes cast in the state for and against each measure and proposed constitutional amendment, and declaring such measures and proposed constitutional amendments as are approved by majority of those voting thereon to be in full force and effect as the law of the state of Arizona from the date of said proclamation; provided, that if two or more measures or proposed constitutional amendments shall be approved at said election, which are known to conflict with each other or to contain conflicting provisions, he shall also proclaim which is paramount in accordance with the provisions of section 7, paragraph 3331, of this title.

3334. In all cities and towns which have not or may not provide by ordinance and charter for the manner of exercising the initiative and referendum powers reserved by the constitution to the people thereof, as to their municipal legislation, the duties required of the secretary of state by this title, as to state legislation, shall be performed as to such municipal legislation by the city auditor, clerk, or recorder, as the case may be; the duties required of the governor shall be performed by the mayor as to such municipal legislation, and the duties required by this title of the attorney general shall be performed by the city attorney as to such municipal legislation. The provisions of this title shall apply in every city and town in all matters concerning the operation of the initiative and referendum in its municipal legislation, on which said city or town has not made or does not make conflicting provisions. The printing and binding of measures and arguments in municipal legislation shall be paid for by the city in like manner as payment is provided for by the state as to state legislation by Section 8, Paragraph 3332, of this title, and said printing shall be done in the same manner that other municipal printing is done; distribution of said pamphlets shall be made to every voter in the city, so far as possible, by the city clerk, auditor or recorder, as the case may be, either by mail or carrier, not less than eight days before the election at which the measures are to be voted upon. Arguments supporting municipal measures shall be filed with the city clerk, auditor or recorder, not less than thirty days before the election at which they are to be voted upon; opposing arguments shall be filed not less than twenty days before said election. It is intended to make the procedure in municipal legislation as nearly as practicable the same as the initiative and referendum procedure for measures relating to the people of the state at large.

3335. Referendum petitions against any ordinance, franchise or resolution, passed by a city council shall be signed by not less than ten per cent of the voters of said city; and said signatures shall be verified in the manner herein provided; the petition shall be filed with the city clerk, auditor, or recorder, as the case may be, within thirty days after the passage of such ordinance, resolutions, or franchise. No city ordinance, resolution or franchise shall take effect and become operative until thirty days after its passage by the council and approval by the mayor, unless the same shall be passed over his veto, and in that case it shall not take

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effect and become operative until thirty days after such final passage, except measures necessary for the immediate preservation of the peace, health, or safety of the city, and no such emergency measure shall become immediately operative unless it shall state in a separate section the reasons why it is necessary that it should become immediately operative, and shall be approved by the affirmative vote of three-fourths of all the members elected to the city council, taken by ayes and noes, and also approved by the mayor.

3336. If any ordinance, charter or amendment to the charter of any city shall be proposed by initiative petition, said petition shall be filed with the city clerk, auditor or recorder, as the case may be, and the city clerk, auditor, or recorder, as the case may be, shall submit the same to the voters of the city or town at the next ensuing election held therein not less than ninety days after the same was first presented to the city council. The council may ordain said ordinance or amendment and refer it to the people, or it may ordain such ordinance or amendment without referring it to the people, and in that case it shall be subject to referendum petition in like manner as other ordinances; the mayor shall not have power to veto either of such measures. If conflicting ordinances or charter amendments shall be submitted to the people at the same election, and two or more of such conflicting measures shall be approved by the people, then the measure which shall have received the greatest number of affirmative votes shall be paramount in all particulars as to which there is conflict, even though such measures may not have received the greatest majority. Amendments to any city charter may be proposed and submitted to the people by the city council with or without an initiation petition, but the same shall be filed with the city clerk for submission not less than sixty days before the election at which they are to be voted upon, and no amendment of a city charter shall be effective until it is approved by a majority of the votes cast thereon by the people of the city or town to which it applies. The city council may by ordinance order special elections to vote on municipal measures.

3337. Referendum petitions against any ordinance, franchise or resolution passed by the board of supervisors of any county, and any ordinance, franchise or resolution may be proposed by initiative petition in any county, and in such case all the provisions of the three preceding sections shall be applicable. The petition in every such case shall be filed with the board of supervisors, and all duties required of the city clerk or recorder shall be performed by the clerk of the said board of supervisors, and all duties required of the mayor of a city or town shall be performed by the chairman of the board of supervisors, and all duties required by the city attorney shall be performed by the county attorney.

3338. Every person who is a qualified elector of the state of Arizona may sign a petition for the referendum or for the initiative for any measure which he is legally entitled to vote upon. Any person signing any name other than his own to any petition, or knowingly signing his name more

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than once for the same measure, or proposed constitutional amendment at one election, or who is not at the time of signing the same a qualified elector of this state, or any officer or person wilfully violating any provision of this statute, shall upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the penitentiary not exceeding two years, or by both fine and imprisonment, in the discretion of the court before which such conviction shall be had.

3339. It shall be unlawful for any person or persons to file any initiative or referendum petition, who at the time of filing said petition, knows it to be falsely made, or to wilfully destroy or suppress any initiative or referendum petition, or any part thereof, which has been duly filed with the lawfully elected officers of the state, or any political subdivision thereof. Any officer or other person or persons violating any of the provisions of this section, or who shall aid and abet in the violation of this section, shall be punished by a fine not to exceed one thousand dollars, or by imprisonment in the state prison not less than one nor more than two years, or by both such fine and imprisonment, in the discretion of the court.

PENAL CODE.

711. It shall be unlawful for any person to induce or compel, or attempt to induce or compel, by menace or threat, either directly or indirectly, any other person to sign or subscribe, or to refrain from signing or subscribing, his name, to any Initiative, Referendum or Recall Petition, or petition to any officer or official body, or, after signing or subscribing his name, to have his name taken therefrom. Any direct or indirect menace or threat that any person will or may be injured in his business or discharged from any lawful employment in which he is engaged, or will not or shall not be employed in any lawful vocation or labor, shall be deemed a violation of this Act. (Sec. 711.)

712. Any person who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

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MAINE.

CONSTITUTIONAL PROVISIONS.

CHAPTER 121, RESOLVES OF 1907.

RESOLVES PROPOSING AN AMENDMENT TO ARTICLE FOUR OF THE CONSTITUTION OF THE STATE OF MAINE, ESTABLISHING A PEOPLE'S VETO THROUGH THE OPTIONAL REFERENDUM, AND A DIRECT INITIATIVE BY PETITION AND AT GENERAL OR SPECIAL ELECTIONS.

Resolved, That the following amendment to the constitution of this state be proposed for the action of the legal voters of this state in the manner provided by the constitution, to wit:

Part first of article four is hereby amended as follows, namely:

By striking out all of section one after the word "Maine" in the third line thereof, and inserting in lieu thereof the following words 'But the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be 'Be it enacted by the people of the state of Maine,' so that said section as amended shall read as follows, namely:

'The legislative power shall be vested in two distinct branches, a house of representatives and a senate, each to have a negative on the other, and both to be styled the legislature of Maine, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls independent of the legislature, and also reserve power at their own option to approve or reject at the polls any act, bill, resolve or resolution passed by the joint action of both branches of the legislature, and the style of their laws and acts shall be, 'Be it enacted by the people of the state of Maine.'

Part third of article four is hereby amended as follows, namely:

By inserting in section one, after the words "biennially and" in the second line thereof, the words 'with the exceptions hereinafter stated,' so that said section shall read as amended:

'The legislature shall convene on the first Wednesday of January, biennially, and, with the exceptions hereinafter stated shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this state, not repugnant to this constitution nor to that of the United States.'

Part third of article four is further amended by adding to said article the following sections to be numbered from sixteen to twenty-two inclusive, namely:

'SECT. 16. No act or joint resolution of the legislature, except such orders or resolutions as pertain solely to facilitating the performance of the business of the legislature, of either branch, or of any committee or officer thereof, or appropriate money therefor or for the payment of salaries fixed

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by law, shall take effect until ninety days after the recess of the legislature passing it, unless in case of emergency (which with the facts constituting the emergency shall be expressed in the preamble of the act,) the legislature shall, by a vote of two-thirds of all the members elected to each house, otherwise direct. An emergency bill shall include only such measures as are immediately necessary for the preservation of the public peace, health or safety; and shall not include (1) an infringement of the right of home rule for municipalities, (2) a franchise or a license to a corporation or an individual to extend longer than one year, or (3) provision for the sale or purchase or renting for more than five years of real estate.'

'SECT. 17. Upon written petition of not less than ten thousand electors, addressed to the governor and filed in the office of the secretary of state within ninety days after the recess of the legislature, requesting that one or more acts, bills, resolves or resolutions, or part or parts thereof, passed by the legislature, but not then in effect by reason of the provisions of the preceding section, be referred to the people, such acts, bills, resolves, or resolutions or part or parts thereof as are specified in such petition shall not take effect until thirty days after the governor shall have announced by public proclamation that the same have been ratified by a majority of the electors voting thereon at a general or special election. As soon as it appears that the effect of any act, bill, resolve, or resolution or part or parts thereof has been suspended by petition in manner aforesaid, the governor by public proclamation shall give notice thereof and of the time when such measure is to be voted on by the people, which shall be at the next general election not less than sixty days after such proclamation, or in case of no general election within six months thereafter the governor may, and if so requested in said written petition therefor, shall order such measure submitted to the people at a special election not less than four nor more than six months after his proclamation thereof.'

'SECT. 18. The electors may propose to the legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the state constitution, by written petition addressed to the legislature or to either branch thereof and filed in the office of the secretary of state or presented to either branch of the legislature at least thirty days before the close of its session. Any measure thus proposed by not less than twelve thousand electors, unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next general election to be held not less than sixty days after the first vote thereon be submitted by itself if it receives more than one-third of the votes given for and against both. If the measure initiated is enacted by the legislature without change, it shall not go to a referendum vote unless in

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pursuance of a demand made in accordance with the preceding section. The legislature may order a special election on any measure that is subject to a vote of the people. The governor may, and if so requested in the written petitions addressed to the legislature, shall, by proclamation, order any measure proposed to the legislature by at least twelve thousand electors as herein provided, and not enacted by the legislature without change, referred to the people at a special election to be held not less than four or more than six months after such proclamation, otherwise said measure shall be voted upon at the next general election held not less than sixty days after the recess of the legislature, to which such measure was proposed.'

'SECT. 19. Any measure referred to the people and approved by a majority of the votes given thereon shall, unless a later date is specified in said measure, take effect and become a law in thirty days after the governor has made public proclamation of the result of the vote on said measure, which he shall do within ten days after the vote thereon has been canvassed and determined. The veto power of the governor shall not extend to any measure approved by vote of the people, and any measure initiated by the people and passed by the legislature without change, if vetoed by the governor and if his veto is sustained by the legislature shall be referred to the people to be voted on at the next general election. The legislature may enact measures expressly conditioned upon the peoples' ratification by a referendum vote.'

'SECT. 20. As used in either of the three preceding sections the words "electors" and "people" mean the electors of the state qualified to vote for governor; "recess of the legislature" means the adjournment without day of a session of the legislature; "general election" means the November election for choice of presidential electors or the September election for choice of governor and other state and county officers; "measure" means an act, bill, resolve or resolution proposed by the people, or two or more such, or part or parts of such, as the case may be; "written petition" means one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of one of the petitioners certified thereon, and accompanied by the certificate of the clerk of the city, town or plantation in which the petitioners reside that their names appear on the voting list of his city, town or plantation as qualified to vote for governor. The petitions shall set forth the full text of the measure requested or proposed. The full text of a measure submitted to a vote of the people under the provisions of the constitution need not be printed on the official ballots, but, until otherwise provided by the legislature, the secretary of state shall prepare the ballots in such form as to present the question or questions concisely and intelligibly.'

'SECT. 21. The city council of any city may establish the initiative and referendum for the electors of such city in regard to its municipal affairs, provided that the ordinance establishing and providing the method of

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exercising such initiative and referendum shall not take effect until ratified by vote of a majority of the electors of said city, voting thereon at a municipal election. Provided, however, that the legislature may at any time provide a uniform method for the exercise of the initiative and referendum in municipal affairs.'

'SECT. 22. Until the legislature shall enact further regulations not inconsistent with the constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this constitution and of the general law, supplemented by such reasonable action as may be necessary to render the preceding sections self-executing.'

Resolved, That all the foregoing is proposed to be voted upon as one amendment, and not as two or more several amendments.

[The thirty-first amendment was proposed to the people by a resolve of the seventy-third legislature, approved March 20, 1907, and having been adopted September 14, 1908, was proclaimed by Governor Cobb to be a part of the constitution, October 30, 1908, and took effect on the first Wednesday of January, 1909.]

MARYLAND.

CONSTITUTIONAL PROVISION.

ARTICLE XVI.

THE REFERENDUM.

SECTION 1. (*a*) The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor.

(*b*) The provisions of this Article shall be self-executing; provided that additional legislation in furtherance thereof and not in conflict therewith may be enacted.

SEC. 2. No law enacted by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it contain a section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly; provided, however, that said period of suspension may be extended as provided in Section 3 (b) hereof. If before said first day of June there shall have been filed with the Secretary of the State a petition to refer to a vote of the people any law or part of a law capable of referendum, as in this Article provided, the same shall be referred by the Secretary of State to such vote, and shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon at the next ensu-

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ing election held throughout the State for Members of the House of Representatives of the United States. An emergency law shall remain in force notwithstanding such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon; provided, however, that no measure creating or abolishing any office, or changing the salary, term or duty of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be enacted as an emergency law. No law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase or any part thereof specified in the petition, may be referred to a vote of the people upon petition.

SEC. 3. (*a*) The referendum petition against an Act or part of an Act passed by the General Assembly, shall be sufficient if signed by ten thousand qualified voters of the State of Maryland, of whom not more than half shall be residents of Baltimore city, or of any one county; provided that any Public Local Law for any one county or the city of Baltimore shall be referred by the Secretary of State only to the people of said county or city of Baltimore, upon a referendum petition of ten per cent of the qualified voters of said county or city of Baltimore as the case may be, calculated upon the whole number of votes cast therein respectively for Governor at the last preceding Gubernatorial election.

(*b*) If more than one-half, but less than the full number of signatures required to complete any referendum petition against any law passed by the General Assembly, be filed with Secretary of State before the first day of June, the time for the law to take effect, and for filing the remainder of signatures to complete the petition shall be extended to the thirtieth day of the same month, with like effect.

SEC. 4. A petition may consist of several papers, but each paper shall contain the full text of the Act or part of Act petitioned upon; and there shall be attached to each such paper an affidavit of the person procuring the signatures thereon that of the said person's own personal knowledge every signature thereon is genuine and bona fide, and that the signers are registered voters of the State of Maryland, and of the city of Baltimore, or county, as the case may be, as set opposite their names, and no other verification shall be required.

SEC. 5. (*a*) The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments.

(*b*) All laws referred under the provisions of this Article shall be submitted separately on the ballots to the voters of the people, but if contain-

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ing more than two hundred words, the full text shall not be printed on the official ballots, but the Secretary of State shall prepare and submit a ballot title of each such measure in such form as to present the purpose of said measure concisely and intelligently. The ballot title may be distinct from the legislative title, but in any case the legislative title shall be sufficient. Upon each of the ballots, following the ballot title or text, as the case may be, of each such measure, there shall be printed the words "For the referred law" and "Against the referred law," as the case may be. The votes cast for and against any such referred law shall be returned to the Governor in the manner prescribed with respect to proposed amendments to the Constitution under Article XIV of this Constitution, and the Governor shall proclaim the result of the election, and, if it shall appear that the majority of the votes cast on any such measure were cast in favor thereof, the Governor shall, by his proclamation, declare the same having received a majority of the votes to have been adopted by the people of Maryland as a part of the laws of the State, to take effect thirty days after such election, and in like manner and with like effect the Governor shall proclaim the result of the local election as to any Public Local Law which shall have been submitted to the voters of any county or the city of Baltimore.

SEC. 6. No law or Constitutional Amendment, licensing, regulating, prohibiting, or submitting to local option, the manufacture or sale of malt or spirituous liquors, shall be referred or repealed under any Act of the provisions of this Article.

NOTE. — The foregoing amendment was submitted by chapter 673 of the Laws of 1914, and was ratified November 2, 1915.

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APPENDIX C.

VOTES IN MASSACHUSETTS ON STATE REFERENDA AND FOR GOVERNOR, 1780–1916.

From *Referenda in Massachusetts and Boston*, by Dr. Edward M. Hartwell, Secretary, Statistics Department, Boston.

Date.	Object of Referendum.	Vote on Referendum.			Vote for Governor.	Percentages.		Result.
		For.	Against.	Total.		Vote on Referendum to Vote for Governor.	Majority Vote on Referendum to Total Vote on Same.	
1780	Adoption of the Constitution,	12,000	1,000	13,000	12,281	105.9	92.3	Accepted.
1795, May 6	Expediency of Revising the Constitution,	7,999	8,325	16,324	17,710	92.2[1]	51.0[1]	Rejected.
1820, Aug. 21	Whether a Constitutional Convention Shall Be Held,[2]	11,756	6,593	18,349	53,297	34.4	04.1	Accepted.
1821, Apr. 9	To Abolish Support, by the Towns, of Protestant Ministers and Required Attendance upon the Instructions of the Clergy,	11,065	19,547	30,612	49,086	62.4[1]	63.9[1]	Rejected.
1821, Apr. 9	To Change the Political Year and Date of State Election,	14,164	16,728	30,892	49,086	62.9[1]	54.1[1]	Rejected.
1821, Apr. 9	To Forbid Bills Unsigned after Adjournment of General Court to Become Laws,	17,949	10,709	28,658	49,086	58.4	62.6	Article I.
1821, Apr. 9	To Empower the Legislature to Grant City Charters,	14,368	14,306	28,674	49,086	58.4	50.1	Article II.

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1821, Apr. 9	To Change Method of Electing Senators, Representatives and Councillors,	9,904	20,729	30,633	49,086	62.4[1]	67.7[1]	Rejected.
1821, Apr. 9	To Abolish Property Qualification for Voters,	18,702	10,150	28,852	49,086	58.8	64.8	Article III.
1821, Apr. 9	To Authorize Appointment of Notaries Public by the Governor,	14,174	13,517	27,691	49,086	56.4	51.2	Article IV.
1821, Apr. 9	To Allow All Members of Militia to Vote for their Captains and Subalterns,	22,726	6,444	29,170	49,086	59.4	77.9	Article V.
1821, Apr. 9	To Empower Governor to Remove Justices of the Peace and to Prohibit Referring Certain Questions to Supreme Court,	12,471	14,518	26,989	49,086	55.0[1]	53.8[1]	Rejected.
1821, Apr. 9	To Allow Overseers of Harvard College Free Choice in Election of Ministers to their Board,	8,020	20,123	28,143	49,086	57.3[1]	71.5[1]	Rejected.
1821, Apr. 9	To Simplify the Oath of Allegiance,	17,552	9,244	26,796	49,086	54.6	65.5	Article VI.
1821, Apr. 9	To Require No Other Oath than that of Allegiance of Any Civil or Military Officer,	13,782	12,480	26,262	49,086	53.5	52.5	Article VII.
1821, Apr. 9	To Make Judges (except of Court of Sessions) and Officials of United States (except Postmasters) Ineligible to State Offices,	18,048	8,412	26,460	49,086	53.9	68.2	Article VIII.
1821, Apr. 9	To Provide that Proposed Amendments of Constitution must be Passed by Two Successive Legislatures before Submission to the People,	16,325	11,661	27,986	49,086	57.0	58.3	Article IX.
1831, May 11	To Change the Political Year and Date of State Election,	19,434	6,277	25,711	48,805	52.6	75.6	Article X.
1833, Nov. 11	To Abolish Support by Towns of Ministers and the Required Attendance upon the Instructions of Clergymen,	32,354	3,272	35,626	62,474	57.0	90.8	Article XI.
1836, Nov. 14	To Change the Basis of Apportioning Members of the General Court,	34,719	11,754	46,473	78,389	59.3	74.7	Article XII.

[1] Indicates a majority against.

[2] Maine became a State on March 15, 1820, hence the voters therein had no part in Massachusetts referenda after 1795.

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VOTES IN MASSACHUSETTS ON STATE REFERENDA AND FOR GOVERNOR, 1780–1916 — CONTINUED.

Date.	Object of Referendum.	Vote on Referendum.			Vote for Governor.	Percentages.		Result.
		For.	Against.	Total.		Vote on Referendum to Vote for Governor.	Majority Vote on Referendum to Total Vote on Same.	
1840, Mar. 10	To Require a Decennial Census of Inhabitants for Determining Apportionment of Senators and Representatives,	24,884	4,912	29,796	127,315	23.4	83.5	Article XIII.
1851, Nov. 10	On Expediency of Holding a Constitutional Convention,	60,972	65,846	126,818	137,187	92.4[1]	51.9[1]	Rejected.
1852, Nov. 8	On Expediency of Holding a Constitutional Convention,	66,416	59,111	125,527	138,436	90.7	52.9	Accepted.
1853, Nov. 14	On Accepting a Revision of Bill of Rights and Constitution,	63,222	68,150	131,372	129,010	101.8[1]	51.9[1]	Rejected.
1853, Nov. 14	To Enlarge the Discretion of the Courts in Granting Writs of Habeas Corpus,	63,282	67,006	130,288	129,010	101.0[1]	51.4[1]	Rejected.
1853, Nov. 14	To Enlarge the Jurisdiction of Juries in Criminal Causes,	61,699	68,382	130,081	129,010	100.8[1]	52.6[1]	Rejected.
1853, Nov. 14	To Permit Claimants to Sue the State,	63,805	66,828	130,633	129,010	101.3[1]	51.2[1]	Rejected.
1853, Nov. 14	To Abolish Imprisonment for Debt,	64,015	66,432	130,447	129,010	101.1[1]	50.9[1]	Rejected.
1853, Nov. 14	To Forbid Support of Sectarian Schools from Public Moneys,	65,111	65,512	130,623	129,010	101.3[1]	50.2[1]	Rejected.
1853, Nov. 14	To Forbid the Creation of Corporations by Special Acts of the Legislature,	63,246	67,011	130,257	129,010	101.0[1]	51.4[1]	Rejected.
1853, Nov. 14	To Forbid the Incorporation of Banks by Special Acts of the Legislature,	63,412	67,109	130,521	129,010	101.2[1]	51.4[1]	Rejected.
1855, May 23	To Provide for the Election of Civil Officers by a Plurality of the Votes Cast,	14,862	5,124	19,986	136,582	14.6	74.4	Article XIV.

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1855, May 23	To Change the Date of the Annual State Election,	17,094	2,762	19,856	136,582	14.5	86.1	Article XV.
1855, May 23	To Change the Number of Councillors and Method of Election,	14,720	4,950	19,670	136,582	14.4	74.8	Article XVI.
1855, May 23	To Make the Offices of Secretary, Treasurer, Auditor and Attorney General Elective by the People,	14,500	5,210	19,710	136,582	14.4	73.6	Article XVII.
1855, May 23	To Forbid Expenditure of Public Moneys for the Support of Sectarian Schools,	17,531	2,541	20,072	136,582	14.7	87.3	Article XVIII.
1855, May 23	To Require the Legislature to Prescribe for the Election of County Officers by the People of the Counties,	13,880	5,724	19,604	136,582	14.4	70.8	Article XIX.
1857, May 1	To Restrict the Right to Vote or to Hold Office to Persons Able to Read and Write,	23,833	13,746	37,579	130,536	28.8	63.4	Article XX.
1857, May 1	To Change the Time of Decennial Census and to Make the Number of Legal Voters the Basis of Apportionment of Representatives,	31,277	6,282	37,559	130,536	28.8	83.3	Article XXI.
1857, May 1	To Base Apportionment of Senators on the Number of Legal Voters Enumerated by Decennial Census,	32,971	4,342	37,313	130,536	28.6	88.4	Article XXII.
1859, May 9	To Forbid Naturalized Citizens to Vote or Hold Office unless Resident in United States for Two Years after their Naturalization,	20,753	15,129	35,882	109,051	32.9	57.8	Article XXIII.
1860, May 17	To Authorize the Senate to Order Elections to Fill Vacancies in the Senate,	4,422	1,205	5,627	169,609	3.3	78.6	Article XXIV.
1860, May 17	To Provide a Method for Filling Vacancies in the Council,	4,103	1,531	5,634	169,609	3.3	72.8	Article XXV.
1863, Apr. 6	To Annul the Twenty-third Amendment. (See 41 above),	10,035	6,082	16,117	99,767	16.1	62.3	Article XXVI.
1877, Nov. 6	To Annul Provision that No Member of Faculty of Harvard College Shall Hold a Seat in General Court,	23,839	6,505	30,344	184,454	16.5	78.6	Article XXVII.

[1] Indicates a majority against.

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VOTES IN MASSACHUSETTS ON STATE REFERENDA AND FOR GOVERNOR, 1780–1916 — CONCLUDED.

Date.	Object of Referendum.	Vote on Referendum.			Vote for Governor.	Percentages.		Result.
		For.	Against.	Total.		Vote on Referendum to Vote for Governor.	Majority Vote on Referendum to Total Vote on Same.	
1881, Nov. 8	To Prevent Disfranchisement of Pauper Soldiers and Sailors,	30,245	20,184	50,429	157,802	31.9	60.0	Article XXVIII.
1885, Nov. 3	To Provide for Voting by Precincts in Towns,	43,598	8,673	52,271	209,668	24.9	83.4	Article XXIX.
1889, Apr. 22	To Forbid the Manufacture of Intoxicating Drinks,	85,242	131,062	216,304	263,111	82.2[1]	60.6[1]	Rejected.
1890, Nov. 4	To Forbid Disqualification of Voters, for Change of Residence, within Six Months of Such Change,	97,177	44,686	141,863	285,526	49.7	68.5	Article XXX.
1890, Nov. 4	To Relieve Soldiers and Sailors Receiving Public Aid from Designation of "Paupers,"	100,109	27,021	127,130	285,526	44.5	78.7	Article XXXI.
1891, Nov. 3	To Abolish Payment of Poll Tax as a Prerequisite to Voting,	144,031	53,554	198,485	321,650	61.7	73.0	Article XXXII.
1891, Nov. 3	To Make a Majority of Each Branch of the General Court a Quorum,	152,688	29,590	182,278	321,650	56.7	83.8	Article XXXIII.
1892, Nov. 8	To Abolish the Property Qualification for Office of Governor,	141,321	68,045	209,366	399,698	52.4	67.5	Article XXXIV.
1893, Nov. 7	To Annul the Provision for Paying Mileage but Once to Members of the General Court,	125,375	80,555	205,930	365,112	56.4	60.9	Article XXXV.
1894, Nov. 6	To Abolish the Office of Commissioners of Insolvency,	114,499	34,741	149,240	335,354	44.5	76.7	Article XXXVI.
1895, Nov. 5	Expediency of Granting Municipal Suffrage to Women,	86,990	186,976	273,966	328,121	83.5[1]	68.2[1]	Rejected.
1896, Nov. 3	To Make Elections of Governor, Lieut.-Governor and Councillors Biennial instead of Annual,	115,505	161,263	276,768	385,064	71.9[1]	58.3[1]	Rejected.

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1896, Nov. 3	To Make Elections of Senators and Representatives Biennial instead of Annual, . .	105,589	156,211	261,800	385,064	68.0[1]	59.7[1]	Rejected.
1907, Nov. 5	To Empower the Governor to Remove Justices of the Peace and Notaries Public, . .	178,005	35,989	213,994	373,705	58.8	83.2	Article XXXVII.
1911, Nov. 7	To Authorize the Use of Voting Machines at all Elections, ...	197,255	107,924	305,179	440,020	69.4	64.6	Article XXXVIII.
1911, Nov. 7	To Authorize Additional Legislation for the Taking of Land and Property for Highways and Streets, ...	197,761	98,546	296,307	440,020	67.3	66.7	Article XXXIX.
1912, Nov. 5	To Prevent Persons, Disqualified because of Corrupt Practises respecting Elections, from Voting, ...	208,492	85,689	294,181	478,792	61.4	70.9	Article XL.
1912, Nov. 5	To Empower the General Court to Prescribe Special Methods of Taxation for Wild or Forest Lands, ...	200,819	70,923	271,742	478,792	56.8	73.9	Article XLI.
1913, Nov. 4	To Make Women Eligible as Notaries Public,	154,691	181,343	336,034	460,873	72.9	54.0[1]	Rejected.
1913, Nov. 4	To Authorize the Referendum by Vote of the General Court, ...	206,689	77,767	284,456	460,873	61.7	72.7	Article XLII.
1914, Nov. 3	To Make Saturday a Half-holiday, . .	248,987	128,251	377,238	458,204	82.3	66.0	Accepted.
1914, Nov. 3	To Abolish the Enrolment of Members of Political Parties and to Limit the Membership of Ward and Town Committees, . .	253,716	86,834	340,550	458,204	74.3	74.5	Accepted.
1915, Nov. 2	Empowering the General Court to Authorize the Taking of Land to Relieve Congestion of Population and to Provide Homes for Citizens, ...	284,568	95,148	379,716	502,146	75.6	74.9	Article XLIII.
1915, Nov. 2	Enabling Women to Vote, ...	162,492	295,939	458,431	502,146	91.3	64.5[1]	Rejected.
1915, Nov. 2	Relative to Taxation of Incomes and the Granting of Reasonable Exemptions, .	269,871	97,856	367,727	502,146	73.2	73.4	Article XLIV.
1916, Nov. 7	On Making New Year's Day a Legal Holiday,	312,678	113,142	425,820	526,421	80.9	73.4	Accepted.
1916, Nov. 7	On Restoring Party Enrolment at Primaries,	209,624	150,050	359,674	526,421	68.3	58.3	Accepted.
1916, Nov. 7	On Holding a Constitutional Convention, .	217,293	120,979	338,272	526,421	64.3	64.2	Accepted.

[1] Indicates a majority against.

NOTE. — The Referenda which became Amendments to the State Constitution are indicated under "Result."

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APPENDIX D.

TABLES OF VOTINGS IN OREGON AND IN PORTLAND CITY ELECTIONS, 1904–16.

Oregon's experience with the Initiative and Referendum has been both more extended and more varied than that of any other State.

The following tables of Oregon Votings, taken from the article "The Oregon System at Work," in The National Municipal Review for April, 1914, by Richard W. Montague, have been brought down to date by the same careful student, Mr. George A. Thacher, who compiled the original tables.

It is believed that these tables are exceptionally reliable, and that they present some of the most valuable material available for the study of the actual working of the Initiative and Referendum. Mr. Montague's paper is of great interest.

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Summary of Action of the Oregon Voters on Constitutional Amendments and Laws submitted, 1904–16.

Year.	All Measures.				Proposed by Initiation.				Referred by Petition.				Referred by Legislature.			
	Submitted.	Adopted.	Rejected.	Percentage adopted.	Submitted.	Adopted.	Rejected.	Percentage adopted.	Submitted.	Adopted.	Rejected.	Percentage adopted.	Submitted.	Adopted.	Rejected.	Percentage adopted.
1904, ...	2	2	–	100.0	2	2	–	100.0	–	–	–	–	–	–	–	–
1906, ...	11	8	3	72.7	10	7	3	70.0	1	1	–	100.0	–	–	–	–
1908, ...	19	12	7	63.1	11	8	3	72.7	4	2	2	50.0	4	2	2	50.0
1910, ...	32	9	23	28.1	25	8	17	32.0	1	–	1	–	6	1	5	16.6
1912, ...	37	11	26	29.7	28	8	20	28.5	3	1	2	33.3	6	2	4	33.3
1913, ...	5	4	1	80.0	1	1	–	100.0	4	3	1	75.0	–	–	–	–
1914, ...	29	4	25	13.7	19	2	17	10.5	–	–	–	–	10	2	8	20.0
1916, ...	11	6	5	54.5	8	4	4	50.0	–	–	–	–	3	2	1	66.6

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State of Oregon.

1902.

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
Initiative and referendum amendment to constitution, ...	67,692	78.5	56,356	-

Average vote cast for six state officers and congressmen, 86,175; highest (secretary of state), 88,704; lowest (attorney-general), 82,838; total electors voting, 92,920.

1904.

Local option liquor law, ...	83,514	92.2	3,118	-
Direct primary election law, . . .	72,559	80.1	39,851	-
Amendment permitting regulation of office of state printer, ...	59,365	65.5	31,303	-

Average vote cast for presidential electors, congressmen, dairy and food commissioner and justice of supreme court, 90,559; highest (congressmen), 93,906; lowest (dairy and food commissioner), 84,569; total number of electors voting, 99,315.

1906.

Referendum on appropriation for state colleges, asylums, etc., ...	70,676	78.2	17,160	-
Equal suffrage amendment, . . .	83,977	92.9	-	10,173
Amendment of local option law to give anti-prohibitionists equal privileges,	80,441	89.0	-	9,847
To provide for state ownership of toll road across Cascades, ...	76,052	84.1	-	13,002
Applying referendum to all laws for constitutional amendments or constitutional conventions, ...	66,412	73.4	28,910	-
To grant cities and towns exclusive power to enact and amend their charters, ...	72,419	80.1	32,715	-
To permit state printers' pay to be regulated by law, ...	73,320	81.1	54,178	-
To provide for initiative and referendum on local and special laws and parts of laws, ...	64,413	71.2	30,943	-
To prohibit the use of free passes by public officers, ...	74,060	81.9	40,502	-
To levy gross earnings taxes on sleeping car, refrigerator car and oil companies, ...	76,076	84.1	63,194	-
To levy gross earnings taxes on express, telegraph and telephone companies,	77,232	85.4	64,512	-

Average vote for eight state officers, congressmen and United States senators, 90,377; highest (governor), 96,715; lowest (labor commissioner), 80,132; total number of electors voting, 99,445.

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1908.

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To increase pay of legislators,	88,583	83.8	-	49,201
To permit state institutions to be located elsewhere than at capital on vote of the people,	82,843	78.3	1,107	-
To increase number of justices of supreme court, etc.,	80,834	76.5	-	20,348
To change time of elections from June to November,	84,318	79.7	47,138	-
To give custody of county prisoners to sheriff, fixing the price of meals of prisoners,	90,476	85.6	30,410	-
To require railroads to transport state and county officers free,	88,262	83.5	-	30,550
To appropriate $100,000 to build armories for national guard,	88,355	83.6	-	21,341
To increase annual appropriation for state university,	84,650	80.1	3,580	-
To grant woman suffrage,	95,528	90.4	-	21,812
To regulate fishing for salmon and sturgeon in certain sections of Columbia river, etc.,	87,302	82.6	5,862	-
Giving cities exclusive control of theatres, race tracks, etc., and of the sale of liquor subject to the local option law,	91,788	86.8	-	12,904
To exempt all improvements, tools, livestock and furniture from taxation,	92,937	87.9	-	28,805
Amendment providing for recall of elective officers,	89,383	84.6	27,379	-
To instruct legislature to elect candidates for United States senators receiving largest popular vote,	90,830	85.9	48,506	-
Amendment authorising proportional representation, preferential ballot, etc.,	82,996	78.5	14,740	-
To limit campaign expenses and prevent corrupt practices in elections,	85,343	80.7	22,741	-
To prevent fishing for salmon and sturgeon in upper Columbia, except with hook and line,	86,410	81.7	25,850	-
Restoring grand jury and prohibiting indictments to be found otherwise,	80,701	76.3	23,727	-
To create Hood River County out of portion of Wasco County,	70,726	66.9	17,170	-

Average vote for four state officers and United States senator, 105,670; highest (United States senator), 112,364; lowest (railroad commissioner), 98,617; total number of electors voting, 116,614.

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1910.

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To grant suffrage to women taxpayers,	94,335	90.7	–	23,795
To authorize construction of an insane asylum in eastern Oregon,	91,638	88.1	8,630	–
To authorize a convention to revise the constitution,	83,117	79.9	–	36,831
To create separate districts for each state senator and representative,	78,252	75.3	–	30,252
To drop requirement that all taxation shall be equal and uniform,	77,791	74.8	–	2,553
To authorize state construction of railroads,	78,914	75.9	–	13,226
To provide that property may be specifically taxed,	73,321	70.5	–	10,063
To increase the pay of a circuit judge in eastern Oregon,	84,664	81.4	–	58,342
Creating Nesmith County,	83,457	80.3	–	37,725
To provide permanent support for Monmouth normal school,	90,235	86.8	10,147	–
Creating Otis County,	79,442	76.4	–	44,590
To annex part of Clackamas County to Multnomah County,	85,252	82.0	–	52,752
Creating Williams County,	78,598	75.6	–	49,582
To permit each county to adopt single tax and to abolish poll tax,	86,298	83.0	2,044	–
To give cities and towns exclusive powers to control sale of liquors subject to local option law,	104,100	100.1	2,542	–
Employers' liability law for protection of laborers in hazardous occupation,	90,201	86.8	22,315	–
Creating Orchard County,	78,376	75.4	–	47,048
Creating Clark County,	77,317	74.4	–	46,091
To provide permanent support for normal school at Weston,	87,099	83.8	–	5,303
To annex a portion of Washington County to Multnomah County,	82,268	79.1	–	54,174
To provide permanent support for normal school at Ashland,	87,128	83.8	–	10,182
To prohibit the manufacture and sale of liquor in Oregon,	104,761	100.8	–	17,681
To prevent manufacture, sale, possession, exchange and giving away of liquor,	106,215	102.2	–	20,913
To create commission to prepare bill to fix indemnity for injuries to employees,	83,943	80.7	–	19,495
To prohibit fishing in Rogue River except with hook and line,	83,109	79.9	16,315	–
Creating DesChutes County,	78,078	75.1	–	42,894
To provide for creation of new towns and counties by vote in such districts,	79,456	76.4	–	5,198
To permit counties to go in debt for permanent roads,	84,181	81.0	18,369	–
Authorizing presidential primaries,	84,977	81.7	1,729	–

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1910 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To provide inspectors of government and for an official gazette,	82,493	79.3	–	22,583
To provide for proportional representation in legislature and otherwise modifying its organization,	81,397	78.3	–	7,335
Judiciary amendment to constitution authorizing verdict of three-fourths of jury in civil cases and for affirmation of judgment on appeal, notwithstanding error committed in lower court,	83,937	80.7	5,139	–

Average vote for fourteen state officers and congressmen, 103,906; highest (governor), 117,690; lowest (water superintendent), 84,308; total number of electors voting, 120,248.

1912.

To grant woman suffrage,	118,369	92.1	4,161	–
To create office of lieutenant governor,	112,206	87.3	–	11,082
To permit specific taxation upon different classes of property,	108,523	84.5	–	4,819
To require uniformity of taxation in each class of property specifically taxed,	106,528	82.9	–	2,438
To repeal measure (adopted in 1910) permitting counties to regulate their own taxation,	111,031	86.4	16,731	–
To require majority of all electors voting for adoption of constitutional amendment,	103,259	80.4	–	37,391
Imposing double liability on bank stockholders,	104,719	81.5	61,243	–
To give railroad commission jurisdiction over all public service corporations,	106,941	83.2	25,029	–
Creating Cascade County,	97,702	76.0	–	44,776
To create a single board of regents for state university and agricultural college and fixing tax levy for such institutions,	105,980	82.5	–	8,578
To require majority of all electors voting for adoption of initiative measures,	104,582	81.4	–	33,140
To permit counties to issue bonds to build permanent roads. (Grange bill),	106,412	82.8	–	7,014
To create a state highway department with engineer at $3,600 a year. (Grange bill),	107,718	83.8	–	59,974
Anticipating date bill regulating state printer becomes effective,	104,335	81.2	–	34,749

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1912 — *Continued.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To create office of hotel inspector,	108,905	84.8	–	75,085
To make an eight-hour day on all public works,	112,586	87.6	16,430	–
To supervise selling stocks and bonds and to require a license therefor,	106,058	82.6	–	8,528
To prohibit employment of state convicts by private agencies and to authorize their employment on public works,	111,292	86.6	36,308	–
To prohibit employment of city convicts by private agencies and authorizing their employment on public works,	109,098	84.9	33,636	–
To create a state board to issue bonds not exceeding a million a year to build public roads. ("Harmony" bill),	106,487	82.9	–	44,693
To prohibit state from incurring indebtedness for road building in excess of 2 per cent of taxable property. ("Harmony" bill),	102,899	80.1	16,005	–
To authorize counties to issue twenty-year bonds for road building, etc. ("Harmony" bill),	103,821	80.8	–	16,599
To prohibit counties from voting road bonds in excess of 2 per cent of assessed valuation. ("Harmony" bill),	101,116	78.7	13,400	–
To provide for consolidating contiguous cities and towns,	97,191	75.6	–	16,793
To provide for the taxation of incomes from whatever source derived,	105,650	82.2	–	246
To exempt from taxation all household goods actually in use,	112,183	87.3	8,531	–
To exempt from taxation all debts of every kind except bank stock and banking capital,	109,031	84.9	–	24,049
To revise inheritance tax laws, etc.,	102,448	79.7	–	25,230
To fix percentage of freight rates on less than carload lots and to establish minimum weights and maximum freights,	103,840	80.8	12,772	–
To authorize county courts to sell bonds for roads when authorized by voters. ("Medford" road bill),	102,049	79.4	–	24,913
To abolish state senate; governor to introduce appropriation bills; proportional representation, etc. (U'Ren constitution),	102,203	79.6	–	40,163
To provide graduated taxes on franchises and natural resources and exempting improvements on land and personalty. (State-wide single tax),	113,549	88.4	–	50,481

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1912 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To abolish capital punishment,	106,529	82.9	–	22,627
To prohibit picketing or boycotting and inducing employees to quit work,	110,386	85.9	–	10,734
To prohibit use of streets and public places for public discussion without written permit from mayor,	111,519	86.8	–	13,545
To appropriate $328,258 for state university buildings,	108,422	84.4	–	49,548
To appropriate $175,000 for library and museum for university,	106,686	83.0	–	52,066

Average vote for four state officers, presidential electors and congressmen and United States senator, 128,391; highest (presidential electors), 137,040; lowest (railroad commissioner), 118,348. Total number of electors voting, 144,113.

Referendum Election.

1913.

Repair fund for university of Oregon,	97,259	–	16,059	–
Appropriation for university buildings,	96,583	–	10,555	–
Sterilization law,	95,086	–	–	11,552
County attorney act,	92,338	–	16,020	–
Workmen's compensation act,	96,422	–	39,206	–

Total number of votes cast, 102,276.

1914.

To amend constitution requiring voters to be citizens of the United States,	204,726	95.7	125,032	–
To create office of Lieutenant-Governor,	195,844	91.6	–	91,764
To consolidate city and county government in certain counties,	180,586	84.4	–	25,802
To bond state for roads, irrigation and power projects,	185,309	86.6	–	85,791
To omit requirement in constitution that all taxation shall be equal and uniform,	175,696	82.1	–	57,284
To provide for specific taxes, income taxes and exemptions,	175,066	81.8	–	70,342
To support normal school at Ashland,	193,684	90.6	–	25,602
To permit passage of laws for consolidation of towns and cities,	173,787	81.3	18,445	–
To support normal school at Weston,	192,795	90.1	–	17,895
To pay legislators $5 per day,	187,365	87.6	–	105,191
Universal constitutional eight-hour day amendment,	217,248	101.6	–	118,528

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1914 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To make eight-hour day for female workers,	208,776	97.6	–	31,816
To prohibit party nominations for judicial officers,	181,586	84.9	–	32,940
To provide a $1,500 tax exemption,	201,688	94.3	–	70,698
Public docks and water front amendment,	181,692	84.9	–	47,436
Municipal wharves and dock bill,	178,223	83.3	–	44,003
Prohibition amendment,	237,204	110.9	36,480	–
Abolishing death penalty,	200,947	94.0	157	–
To provide for specific personal graduated taxes,	184,129	86.1	–	65,757
To consolidate corporation and insurance departments,	175,623	82.1	–	64,685
Dentistry bill,	203,126	95.0	–	17,682
County officers term amendment,	189,880	88.8	–	24,198
Tax code commission bill,	177,904	83.2	–	109,032
To abolish Desert Land Board and to reorganize certain state officers,	176,067	82.3	–	110,665
Proportional representation amendment,	176,856	82.7	–	97,376
State senate constitutional amendment,	185,805	86.9	–	61,053
To create department of industry and public works,	184,060	86.1	–	68,342
Primary delegate election bill,	178,696	83.1	–	128,580
Equal assessment and taxation and $300 exemption amendment,	183,787	85.9	–	97,227

Average vote for twelve state officers, congressmen and United States senator, 213,757; highest (governor), 248,052; lowest (superintendent of water divisions), 172,404. Total number of electors voting, 259,868.

1916.

Single item veto amendment,	194,980	83.0	88,566	–
Ship tax exemption,	185,062	78.8	54,242	–
To repeal provision against negro suffrage,	200,728	85.5	–	674
Full rental value land tax and home-makers loan fund amendment,	198,370	84.5	–	111,590
To provide a normal school at Pendleton and ratify location of certain institution,	206,352	87.9	–	12,694
Anti-compulsory vaccination bill,	199,864	85.1	–	374
To repeal Sunday closing law,	218,912	93.2	32,760	–
To permit manufacture and sale of 4 per cent malt liquors,	226,572	96.5	–	54,626
Forbidding importation of intoxicating liquors for beverage purposes,	224,603	95.7	5,261	–

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1916 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To create rural credit loan fund,	191,375	81.5	23,601	–
To limit increase of taxes to 6 per cent increase on previous levy,	183,567	78.2	15,505	–

Average vote for five state officers, presidential electors and congressmen, 234,686; highest (presidential electors), 260,547; lowest (supreme court justices), 202,664. Total number of electors voting, 269,057.

City of Portland.

1905.

To annex territory,	9,962	73.1	638	–
To annex territory,	10,007	73.4	3,103	–
To tax whole city for bridges,	11,141	81.7	2,991	–
To grant street railway franchise,	10,124	74.3	–	1,886
To provide security for city funds,	9,192	67.5	2,462	–
To provide a clerk for police court,	9,240	67.8	526	–
To place penalty on delinquent assessments,	9,039	66.4	–	939
To decrease cost of advertising,	9,446	69.3	6,034	–
To grant telephone franchise,	13,773	101.0	12,653	–

Average vote cast for ten city officers, 13,624; highest (mayor), 14,689; average for five councilmen, lowest, 13,156.

1907.

To issue water bonds,	14,363	91.4	131	–
To issue park and boulevard bonds,	14,286	90.9	2,000	–
To issue dock bonds,	13,961	88.9	4,867	–
To issue bridge bonds,	14,440	91.9	9,304	–
To issue bonds for fire boat and water mains,	13,943	88.8	3,967	–
To improve streets by districts,	13,121	83.5	5,317	–
To permit remonstrance of four-fifths of property owners to defeat street improvements,	12,736	81.1	3,396	–
To regulate sale of property for assessments,	12,445	79.2	5,961	–
To increase salary of city engineer,	13,745	87.6	–	4,841
To increase salary of city attorney,	13,750	87.6	–	5,950
To increase salary of city treasurer,	13,654	86.9	–	4,980
To increase salary of police judge,	13,678	87.1	–	2,804
To increase salaries of councilmen,	13,905	88.5	–	6,395

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1907 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To create office of sergeant of police,	12,864	81.9	2,556	–
To create free employment bureau,	13,449	85.6	6,583	–
To annex territory,	11,950	76.1	3,996	–
To create board of engineer examiners,	13,172	83.8	–	1,790
To regulate electrical wiring,	13,179	83.9	–	2,059
To grant franchise to gas company,	13,915	88.6	3,385	–
To increase liquor license fees,	14,203	90.4	1,735	–
To fix wholesale liquor license fees,	13,599	86.6	4,389	–

Average vote cast for eight city officers, 15,701; highest (mayor), 16,919; lowest (councilmen), 14,866.

1909.

To adopt commission form of government,	15,673	93.8	–	5,867
To levy cost of water mains on property benefited,	14,824	88.8	–	6,806
To pay cost of water mains out of water fund,	14,122	84.5	472	–
To amend provisions for official advertising,	14,581	87.3	–	3,785
To regulate electric wiring,	14,989	89.7	–	1,943
To require franchise holders to keep books of account,	14,746	88.3	5,858	–
To amend section creating women's auxiliary of police,	15,065	90.2	1,031	–
To purchase warrants from any idle fund,	14,470	86.6	–	2,904
To permit bank of $50,000 capital to apply for deposits,	14,273	85.5	87	–
To deposit funds upon open accounts,	13,952	83.5	–	3,050
To take chief deputy engineer and others from civil service,	14,151	84.7	–	2,777
Regulating discharge of employees in civil service,	14,617	87.5	2,331	–
To authorize deputy clerk in police court,	14,610	87.5	–	3,806
To authorize auditor to act as clerk of viewers,	14,241	85.3	3,999	–
To withhold delivery of warrants till proof of prior liens is filed,	14,048	84.1	3,320	–
To require assurances of rededication on vacating streets,	13,538	81.1	1,942	–
To appropriate earth above street grades,	14,202	85.0	896	–
To provide bonding assessments for street and sewer work,	13,805	82.6	1,777	–
To increase rate of interest on delinquent assessments,	14,122	84.5	–	6,140
To provide that acceptance of improvements by city is conclusive as to character,	13,505	80.9	–	667

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1909 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To abolish water, park and health boards,	14,322	85.7	–	1,590
To issue bonds for water mains,	13,813	82.7	1,403	–
To permit council to fix salary of city engineer,	14,461	86.6	–	3,039
To permit council to fix salary of city treasurer,	14,282	85.5	–	7,342
To permit council to fix salary of city attorney,	14,491	86.8	–	7,371
To issue crematory bonds,	15,481	92.7	7,999	–
To issue Broadway bridge bonds,	16,139	96.6	4,017	–
To regulate electric poles, wires, etc.,	14,597	87.4	1,673	–
To transfer Hawthorne bridge to Market street,	15,953	95.5	–	11,495
To issue Sherman street bridge bonds,	15,499	92.8	–	9,017
To prohibit use of patented articles,	14,885	89.1	–	9,415
To grant a corporation exclusive privilege of selling liquor for ten years,	16,111	96.5	–	13,913
To create an excise board to control sale of liquor,	15,559	93.2	–	9,233
To issue light and power bonds,	15,723	94.1	–	3,645
To license vehicles,	15,443	92.5	–	815

Average vote cast for seven city officers, 16,693; highest (mayor), 17,751; lowest (councilmen), 15,802.

Special Election.

1910.

To issue dock bonds,	27,076	–	10,466	–
To issue bonds for water system,	26,261	–	3,645	–
To increase salary of city engineer,	25,605	–	–	609
To increase salary of city attorney,	25,439	–	–	1,531

1911.

To issue Meade street bridge bonds,	25,471	96.8	–	2,411
To levy tax for street cleaning fund,	22,807	86.7	2,765	–
To pension firemen,	25,277	96.1	–	3,643
To increase city attorney's salary,	24,080	91.5	–	2,926
To pension policemen,	25,057	95.2	–	9,977
To issue bonds for municipal building,	24,669	93.8	12,575	–
To issue park bonds,	24,674	93.8	–	10,522
To fill gulches out of special bridge fund,	23,245	88.3	3,373	–
To issue public auditorium bonds,	24,686	93.8	3,144	–
To issue bonds for garbage collecting system,	24,119	91.7	5,497	–
To increase salary of city engineer,	23,807	90.5	–	99

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1911 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To pension men in street cleaning department,	24,550	93.3	–	14,542
To require two or more sets of plans for sewer work,	23,116	87.9	6,956	–
No seat no fare ordinance,	25,736	97.8	–	8,308
To levy license tax on gross receipts of gas companies,	24,206	92.0	3,104	–
To levy license tax on gross receipts of electric companies,	23,923	90.9	2,817	–
To create a public service commission,	22,897	87.0	–	485
To issue bonds for municipal paving plant,	24,160	91.8	–	7,264
To prevent rights and interests of city from being divested,	22,947	87.2	6,551	–
To regulate fences and bill boards,	24,631	93.6	5,623	–
To authorize council to determine lowest bidder and select street improvement,	22,597	85.9	1,139	–
To prevent carrying of banners,	24,872	94.5	–	8,380
To prevent boycotting,	24,952	94.9	–	756

Average vote cast for ten city officers, 26,293; highest (mayor), 28,006; lowest (councilmen), 25,423.

Special Election.

1912.

To adopt commission form of government,	25,353	–	–	917
To issue bonds to buy Ross Island,	25,449	–	–	15,043
To issue bonds for a South Portland bridge,	25,444	–	–	9,362
To issue incinerator bonds,	25,262	–	–	1,496
To issue park and boulevard bonds,	25,271	–	–	6,047
To issue bonds for site of public auditorium,	24,752	–	–	6,060
To vacate streets for public purposes,	24,520	–	8,102	–
To lengthen time for bonding street and sewer assessments,	24,708	–	16,498	–
To increase city attorney's salary,	24,959	–	–	7,599
To increase city treasurer's salary,	24,875	–	–	8,471
To increase city engineer's salary,	25,056	–	–	6,000
To create office of city prosecutor,	24,561	–	–	11,575
To bond street extension assessments,	23,826	–	9,206	–
To take police out of civil service,	25,567	–	–	13,537
To levy general tax to pay water bonds when fund is short,	24,287	–	–	7,063
To authorize city engineer to make street assessments,	24,101	–	3,209	–
To issue public market bonds,	25,274	–	–	288
To create public service commission,	24,248	–	–	7,796

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1912 — *Concluded.*

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
To charge three cents toll for cars on bridges,	24,905	–	9,711	–
To indorse Greater Portland plans,	24,198	–	8,206	–
To grant electric company franchise,	25,818	–	21,924	–
To adopt a short charter creating commission government,	24,655	–	–	17,489

Special Election on Commission Charter and Nominating or Primary Election under old Charter to be effective if Commission Charter failed to carry.

1913.

To adopt the commission form of government,	34,842	135.8	292	–

Average vote cast for candidates for seven offices, 25,282; highest (mayor), 30,674; lowest (city attorney), 22,517.

Regular Election.

1913.

To pension firemen,	42,353	99.6	13,553	–
To grant street railway franchise,	40,236	94.6	–	10,502
To repeal railroad franchise,	37,009	87.0	–	5,125
To repeal railroad franchise,	36,854	86.7	–	4,970
To issue bonds for a South Portland bridge,	39,467	92.8	–	14,125
To issue incinerator bonds,	38,954	91.6	6,812	–
To pay part of street assessments by city,	36,421	85.7	–	525
To issue bonds for parks and play grounds,	39,183	92.2	–	7,621
To permit indeterminate sentences for violation of city laws,	34,737	81.7	7,317	–
To issue bonds for historical society building,	38,113	89.6	–	17,597
To eliminate grade crossings,	34,534	81.2	9,560	–
To issue bonds to buy Council Crest Park,	38,965	91.6	–	12,643
To authorize a common transportation terminal,	33,775	79.4	9,055	–
To retain public docks commission,	35,630	83.8	10,544	–

Average vote for six city officers, 42,494; highest (mayor), 45,521; lowest (commissioner), 41,456.

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Special Election December 9.

1913.

Measures voted on.	Total Vote on Measure.	Per Cent of Average Vote for Officers.	Majority.	
			For.	Against.
Improvement bonding account,	14,672	–	–	5,132
To exempt certain city officers from being registered voters,	14,591	–	–	8,913
To exempt certain city officers from being citizens of United States,	14,636	–	–	9,714
To allow city to acquire property outside of city limits,	14,164	–	–	7,982
To make efficiency instead of date of order of discharge controlling factor in reappointment of civil service employees,	14,509	–	–	4,131
To define powers of municipal court,	14,111	–	–	5,273
To change methods of passage of ordinances,	14,299	–	–	4,211
Amendment in reference to sale of public utility certificates,	14,192	–	–	8,788
To exempt certain officers from civil service regulations,	14,442	–	–	7,634
To require council to act by ordinance,	14,000	–	–	6,538
Regulating sale of bonds and public utility certificates,	14,296	–	–	4,076
Municipal paving bond issue,	14,622	–	–	7,606
Public market bond issue,	14,752	–	–	4,398
Park and playgrounds bonds,	14,765	–	–	9,921
To amend fireman's pension act,	14,609	–	–	1,231

Regular City Election.

1915.

To provide water meters,	35,047	105.7	–	3,377
To adopt a Sunday closing ordinance,	33,799	101.9	–	13,205
To provide for reappointment in order of original appointment in civil service,	26,960	81.3	8,090	–
To provide garbage system,	33,395	100.7	–	7,327
To provide method of eliminating grade crossings,	28,178	85.0	12,400	–
To turn over pound to Humane Society,	31,040	93.6	8,324	–
To regulate jitneys,	35,152	106.0	7,034	–
To provide for method of levying street assessments,	28,144	84.9	5,880	–
To pension firemen,	30,875	93.1	10,999	–
To erect firestops,	30,086	90.7	7,904	–
To annex St. Johns,	35,817	108.0	24,097	–
To annex Linnton,	35,383	106.7	9,009	–

The average vote for three city officers was 33,504.

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Recall Election, October 31, 1914. — Vote on whether City Officials shall be recalled.

	Yes.	No.
Mayor H. R. Albee,	15,455	33,687
Commissioner R. G. Dieck,	20,146	28,297
W. L. Brewster,	17,896	28,976

	First Choice.	Second Choice.
At this recall election —		
Albee received for mayor,	29,219	385
Dieck received for commissioner,	23,679	385
Brewster received for commissioner,	25,223	–

Five other candidates for the three offices received a total of 48,888 first choice votes and 17,670 second choice votes. One ordinance was voted on.

	Yes.	No.
Water rate ordinance,	23,392	21,726

NOTE. — Besides the tables here printed, detailed tables showing the nature of every initiative or referendum measure ever submitted in any State in the Union and the vote thereon have been compiled and may be consulted in the State Library.

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BULLETIN No. 7

THE PUBLIC OPINION LAW OF MASSACHUSETTS

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THE PUBLIC OPINION LAW OF MASSACHUSETTS.

After some ten years' discussion of such a project, the Massachusetts General Court, by the so-called "Public Opinion Law" of 1913 (c. 819), gave the voters of this Commonwealth an opportunity to express an opinion on certain questions of public policy, duly propounded to them, in their several districts.

The clearest precedent for this measure was the Illinois statute of 1901 (Laws of 1901, p. 198; Rev. Stat. 1906, c. 46, secs. 428–429, p. 967) which provided for what has been called an "Advisory Initiative" or "Advisory Referendum," by which, upon petition of 10 per cent of the registered voters, not more than three "questions of public policy" might be submitted to the voters at a state election; and a similar submission of local questions was made possible within an individual municipality. Several acts, based upon a public opinion thus educed or evidenced, have been passed by the Legislature of Illinois. But the law has given only moderate satisfaction. Since it provides merely for a vote expressive of an opinion, and not for an "instruction" to the members of the Legislature, and since the members usually have not been pledged in advance to support these measures, the voters' advice on "questions of public policy" is treated with scant consideration. Such votes are cast with the feeling that no serious responsibility rests upon that action; the advice is addressed to no one in particular, nor is it expressed in the imperative mood.

In 1906 the question was referred to the voters of Delaware: "Shall the General Assembly of the State of Delaware provide a system of advisory initiative and advisory referendum?" Although the proposal was approved by a popular vote of 17,248 to 2,162, the Legislature has never enacted the statute necessary to put that mandate into effect.

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For a dozen years Texas has had an advisory system which enables the voters in any political party to propose policies and secure a direct party vote thereon. (Laws 1905, First Called Sess., c. 11, sec. 140.)

The advocates of the Massachusetts "Public Opinion Law" of 1913 claimed that the theory underlying this statute as well as its phraseology were derived from Article XIX of the Massachusetts Bill of Rights of 1780: "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; *give instructions to their representatives*, . . . " etc. In the seventeenth and eighteenth centuries, before the adoption of the Massachusetts Constitution, the instruction of delegates was not an infrequent thing. In quite a number of instances towns instructed their representatives between 1780 and 1800; but in every one of these instances the right to instruct was exercised in conjunction with the other right, — "to assemble to consult upon the common good." In other words, the instructions were presented, debated and adopted in the very town meeting in which the individual delegate was being elected, and it was his privilege to take part in the debate and to decline to serve, if he could not conscientiously hold himself to compliance with the instructions there framed. It may be doubted whether the framers of the Bill of Rights had in mind any other mode of instructing representatives than by the vote of a deliberative body, of which the delegate was a member.

The essential features of the law of 1913 are that, on application of the stipulated number of registered voters (1,200 from a senatorial, and 200 from a representative district) asking for the submission to the voters of that district of any question of instruction to its member of the Legislature, if the Secretary of the Commonwealth determines that the question which they propose is in substance one of public policy, he shall draft it in clear language and cause it to be placed upon the ballot in that particular district. Not more than two questions may be submitted on the ballot at one election, and they shall be submitted in the order in which the applications have been filed. No question negatived and no question substantially the same shall be submitted again in less than three years. No vote under the provisions of this law shall be regarded as an *instruction* under

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Article XIX of the Bill of Rights, unless the question receives a majority of all votes cast at that election.

In the first year's experience with the working of this law five districts, scattered among as many counties, voted upon the question of instructing their representatives to support a constitutional amendment providing for the State-wide Initiative and Referendum, and in every one of these districts a majority favored that proposal.

In the following year (November 2, 1915) that same question was put before the voters in one other district, and was by them approved. Ten districts voted on the question of instructing their representatives to favor old-age pensions for persons sixty-five years of age and over who had been residents of Massachusetts for fifteen years; and in each of these cases a majority of those voting on the question favored the proposal. Three districts (together comprising Fall River and three contiguous towns) voted on an instruction that their representatives should vote that power should be vested in cities to elect their own police and license commissions; and in two of these three districts the vote was in favor of the proposal.

But whether the result in any one of these votings of the years 1914 and 1915 was such that it should be regarded as an "instruction under Article XIX of the Bill of Rights" is a question which the official election returns published by the Commonwealth do not answer, for the "blanks" are not there listed.

Greater interest than ever before attached to the votings on public opinion questions on November 7, 1916. Four districts on that day voted on the question of instructing representatives to favor non-contributory old-age pensions, and in three cases the votes cast in favor exceeded the negative votes and the blanks on that question. In one district the question voted on was: "Shall all civil pensions be abolished until such time as non-contributory old-age pensions be established?" In that district the "yes" votes failed to outweigh the "no" votes and the blanks.

But the chief interest centered on the question of instructing representatives to favor a constitutional amendment providing for the Initiative and Referendum. This was submitted to the voters in 1 senatorial and 36 representative districts, comprising

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10 cities, parts of 6 other cities and 83 towns, a special effort being made, it is stated, to secure a vote on that issue in districts whose representatives in the General Court had uniformly voted against such a proposed amendment. In every district and in every city, ward and town in the districts, the majority of the votes cast on that question was in the affirmative, with the single exception of one tiny town, where three votes were "yes" to four "no." But the showing is by no means so impressive when it is noted how large a proportion of the voters ignored the question altogether. In only 9 districts did the "yes" vote outweigh the "no" vote and the blanks. Accordingly, only 9 out of the 37 members of the Legislature chosen in those districts on that day were duly "instructed." Of the total number of votes cast in all the districts on that question, 47 per cent were in favor of the proposed instruction and 12 were opposed; the remaining 40 per cent of the ballots were blank on that question. The returns from those same districts on the question of the call of a constitutional convention show that 38 per cent of their total vote was cast in favor of that proposal, while 22 per cent opposed it and 40 per cent expressed no choice. But on *that* question the blanks were not taken into consideration in determining the decision.

The phrasing of the law of 1913 is susceptible of several different meanings. A vote within a district is not to be regarded as an instruction unless "the question receives a majority of all votes cast at the election." In the first place, this might be held to mean a majority of the votes cast on that particular question. In an election, *e.g.*, of State Treasurer or Auditor, the candidate is successful who receives a plurality of votes cast for the candidates for that office, no matter how far short that aggregate may fall of the votes cast for candidates for Governor. In the great majority of States which have introduced the Initiative and Referendum the majority which decides is the majority on the question that is submitted, however widely that aggregate may differ from the vote cast for candidates. A second reasonable interpretation of the requirement that "the question receive a majority of all votes cast at the election" would be that the question should call forth an

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expression, one way or the other, from a majority of those who voted on that day. Something might be said in favor of such a regulation. It would seem that a measure of any considerable moment might be so presented to the voters that a majority of those who went to the polls would be interested and intelligent enough to vote for or against it; and an approval by at least 25 per cent of those voting would assure to the measure a respectable backing. But the accepted meaning of the requirement is that the "yes" vote on the proposed instruction must exceed not only the "no" votes on that question but also in addition all the blanks on that question; in other words, the instruction must be backed by an absolute majority of the total number who voted at all at that election, — *e.g.*, for candidates for Governor. This is insisting upon a severer test than is applied in the election of most officers, State and Federal. Most Presidents and Governors are elected by a minority vote. Had this test of an absolute majority of the vote for candidates for Governor been applied to the votings by which forty-four amendments have been added to the Constitution of this Commonwealth, only two (Amendments XLIII and XLIV) would have been ratified by the votes which did actually make them effective.

Votes upon Questions of Public Policy.

(Under the Act of 1913, Chapter 819.)

Experience under this law covers but three years, and it seems desirable to make the following tabulation present the results of all the votings that have actually been taken. In this brief record it is of interest to note the districts of the Commonwealth which have availed themselves of this opportunity, the type of question upon which votings have been taken, the proportion of districts which have voted "yes," and the relation which the "yes" vote has borne to the total number of votes cast at that election.

In the votings for the years 1914 and 1915 the statistics have been taken from the official reports issued by the Secretary of the Commonwealth, supplemented by statements of the total aggregate vote for candidates for Governor supplied to the present compiler by the clerks of the several towns and cities;

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and the number of blanks has been determined by subtracting the sum of the "yes" and "no" votes from the aggregate vote for Governor.

November 5, 1914.

Question 1. — "Shall the Representative from this district be instructed to support the Initiative and Referendum, so as to give the voters the power to accept or reject at the polls measures that have been proposed by petition?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Eighth Bristol Representative:				
New Bedford, Wards 4, 5, and 6,	2,655	1,121	1,039	55
First Hampden Representative:				
Brimfield, Holland, Monson, Palmer, Wales,	953	300	732	48
Fourth Middlesex Representative:				
Newton,	3,370	1,566	1,151	55
Fifth Middlesex Representative:				
Waltham,	2,803	746	1,390	57
Seventh Middlesex Representative:				
Weymouth,	1,307	274	954	52

November 2, 1915.

Question 1. — "Shall the Representative from this district be instructed to support the Initiative and Referendum, so as to give the voters the power to accept or reject at the polls measures that have been proposed by petition or to reject at the polls, upon petition, measures that have been passed by the General Court?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Ninth Essex Representative:				
Andover,	761	252	410	53

Question 2. — "Shall the Representative from this district be instructed to vote for Non-contributory Old Age Pensions, so as to have the Commonwealth pension its deserving needy aged

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citizens, women and men, over sixty-five years of age, and residents of the Commonwealth for at least fifteen years?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Fifth Essex Representative: Lawrence, Wards 1 and 2, and Methuen,	3,083	893	1,076	61
Sixth Essex Representative: Lawrence, Wards 3 and 4,	1,788	342	552	66
Seventh Essex Representative: Lawrence, Ward 5,	1,246	376	387	62
First Middlesex Representative: Cambridge, Wards 1, 2 and 3,	1,554	236	505	68
Second Middlesex Representative: Cambridge, Wards 4, 5, 6 and 7,	3,750	997	1,051	65
Third Middlesex Representative: Cambridge, Wards 8, 9, 10 and 11,	3,393	1,485	1,078	56
Fifth Plymouth Representative: Abington, Whitman,	1,649	401	462	65
Ninth Plymouth Representative: Brockton, Wards 3 and 4,	2,055	361	340	74
Tenth Plymouth Representative: Brockton, Wards 1, 2 and 5,	2,957	616	501	72
Eleventh Plymouth Representative: Brockton, Wards 6 and 7,	2,216	364	318	76

Question 3. — "Shall the Representative from this district be instructed to vote that the power to select police and license commissioners in cities be vested in cities?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Ninth Bristol Representative: Fall River, Wards 1 and 2, Westport,	2,170	1,909	441[1]	60
Tenth Bristol Representative: Fall River, Wards 3, 4 and 5,	1,976	1,149	450	55
Eleventh Bristol Representative: Fall River, Wards 6, 7, 8 and 9, Somerset, Swansea,	2,654	3,277	753	39

[1] Excess. According to the city clerk's report the vote on this particular question in this district exceeded the total vote for all candidates for Governor by 441.

In the following tabulation of the statistics of the votings of November 7, 1916, the figures for the "yes" and "no" votes have been taken from the official reports issued by the Secre-

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tary of the Commonwealth; the figures as to the "blanks" are here given as reported to the compiler by the Massachusetts Civic Alliance, by whom they were secured from the clerks of the several cities and towns. In the fourth column the "yes" vote has been figured as a percentage of the total vote, — the sum of the figures in the first three columns.

November 7, 1916.

Question 1. — "Shall the Representative or Representatives from this district be instructed to support the adoption of an amendment to the Constitution of the Commonwealth providing for some form of the Initiative and Referendum which shall give to the voters the power to accept or reject statutes and constitutional amendments proposed to the Legislature by petition of a substantial number of citizens but rejected by it, and also the power, upon such petition, to reject measures passed by the Legislature?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
First Essex Senatorial: Lynn, Wards 1, 2, 3, 4, 5 and 7, Nahant, Swampscott,	7,559	2,101	5,025	51
First Barnstable Representative: Barnstable, Bourne, Falmouth, Mashpee, Sandwich,	873	332	1,288	35
Second Berkshire Representative: Hancock, New Ashford, North Adams, Wards 1, 2 and 7, Williamstown,	841	237	1,152	38
Fourth Berkshire Representative: Lanesborough, Pittsfield,	3,217	975	3,119	44
Sixth Berkshire Representative: Alford, Egremont, Great Barrington, Mount Washington, New Marlborough, Sandisfield, Sheffield, Stockbridge, West Stockbridge,	901	322	1,348	34
First Bristol Representative: Attleboro, North Attleborough,	2,367	423	3,721	36
Ninth Bristol Representative: Fall River, Wards 1 and 2, Westport,	2,051	751	2,105	42
Third Essex Representative: Haverhill, Wards 4 and 6,	1,208	528	1,048	43
Fourth Essex Representative: Boxford, Georgetown, Groveland, Haverhill, Wards 5 and 7,	2,009	606	1,755	46
Sixth Essex Representative: Lawrence, Wards 3 and 4,	1,402	277	1,230	47

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District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Thirteenth Essex Representative: Lynn, Wards 1, 6 and 7, Lynnfield, Saugus,	3,472	771	2,735	49
Nineteenth Essex Representative: Beverly, Wards 1, 2, 3 and 5,	1,258	416	1,001	47
Twenty-first Essex Representative: Gloucester, Wards 3, 4, 5, 6 and 8,	913	305	1,187	38
Eighth Hampden Representative: Chicopee,	1,564	332	1,550	45
Twelfth Hampden Representative: Westfield,	1,187	357	1,157	44
Fourth Hampshire Representative: Belchertown, Enfield, Granby, Greenwich, Pelham, Prescott, Ware,	678	394	1,024	32
First Middlesex Representative: Cambridge, Wards 1, 2 and 3,	1,002	200	1,129	43
Second Middlesex Representative: Cambridge, Wards 4, 5, 6 and 7,	3,079	763	2,443	49
Third Middlesex Representative: Cambridge, Wards 8, 9, 10 and 11,	3,039	1,124	2,188	48
Thirteenth Middlesex Representative: Concord, Lincoln, Sudbury, Wayland, Weston,	1,016	419	1,024	41
Eighteenth Middlesex Representative: Reading, Stoneham, Woburn,	2,964	607	2,294	50
Twenty-first Middlesex Representative: Malden,	3,809	933	2,663	51
Twenty-third Middlesex Representative: Somerville, Wards 1, 3, 4 and 5,	3,274	768	1,954	55
Twenty-fourth Middlesex Representative: Somerville, Wards 2, 6 and 7,	3,864	786	2,111	57
Twenty-fifth Middlesex Representative: Medford, Winchester,	1,313	386	853	51
Twenty-seventh Middlesex Representative: Arlington,	1,683	373	757	59
Second Norfolk Representative: Brookline,	2,988	1,342	1,322	52
Third Norfolk Representative: Quincy,	3,110	839	2,522	48
Seventh Norfolk Representative: Randolph, Sharon, Stoughton,	1,237	267	1,181	46
Second Plymouth Representative: Duxbury, Marshfield, Norwell, Pembroke, Scituate,	674	210	940	37
Third Plymouth Representative: Cohasset (Norfolk County), Hingham, Hull,	821	279	856	42
Seventh Plymouth Representative: Halifax, Kingston, Middleborough, Plympton,	796	190	869	43
Eighth Plymouth Representative: Bridgewater, East Bridgewater, West Bridgewater,	954	197	975	45

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District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Sixth Suffolk Representative:				
Boston, Ward 6,	1,821	300	1,385	52
Sixth Worcester Representative:				
Auburn, Oxford, Webster,	1,203	212	1,332	44
Ninth Worcester Representative:				
Grafton, Milford, Shrewsbury, Southborough, Upton, Westborough,	2,109	540	2,538	40
Tenth Worcester Representative:				
Berlin, Bolton, Boylston, Clinton, Harvard, Holden, Lancaster, Northborough, Princeton, Sterling, West Boylston,	1,787	469	2,359	39

Question 2. — "Shall the Representative from this District be instructed to vote for Non-contributory Old Age Pensions, so as to have the Commonwealth pension its deserving aged citizens, women and men, over sixty-five years of age, who are unable to properly provide for themselves, and who have been residents of the Commonwealth for at least fifteen years prior to the filing of an application for a pension?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Eighth Bristol Representative:				
New Bedford, Wards 4, 5 and 6,	3,561	1,140	1,705	55
Ninth Suffolk Representative:				
Boston, Ward 9,	1,793	261	1,676	48
Tenth Suffolk Representative:				
Boston, Ward 10,	2,197	446	1,449	54
Eleventh Suffolk Representative:				
Boston, Ward 11,	2,157	369	1,388	55

Question 3. — "Shall all civil pensions now paid, including those paid to members of the Judiciary, excluding police and firemen, be abolished until such time as Non-contributory Old Age Pensions be established?"

District.	Yes.	No.	Blanks.	Yes (Per Cent of Total Vote).
Seventh Norfolk Representative:				
Randolph, Sharon, Stoughton,	971	506	1,208	36

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BULLETIN No. 8

COUNTY GOVERNMENT IN MASSACHUSETTS

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COUNTY GOVERNMENT IN MASSACHUSETTS.

I. THE MEANING OF COUNTY GOVERNMENT.

1. Early English History.

County government in Massachusetts and in the United States is modeled largely upon the old English county which has existed from ancient Saxon times. To understand the organization and administration of county government in any of the States of the Union it is necessary to trace back the development from its English prototype.

The English colonists, coming to these shores in the seventeenth century, brought with them their traditions as to county governments, and for the purpose of their judicial systems adopted the form of county government then existing in England.

The development in America, however, from the time of the Revolution has been different in a large measure from the development of the English county. About one-third of the old English counties represented ancient kingdoms or tribal divisions; others were artificially bounded areas, lying around some stronghold which had become a center of civil and military administration. Under the Saxon kings each of these counties, or areas, was to a large extent independent of a central administrative authority, although the Saxon kings, varying according to the strength of these semi-independent areas, maintained a hegemony over them. With the coming of the Norman kings, however, these counties or tribal divisions, kingdoms and subkingdoms, were united under a central authority radiating from the chief city, London, and the existence of the counties as independent units ceased.

After the Norman conquest the word county (old French conté, or territory of a count) was substituted for the old Saxon designation of "shire," and the latter has now come to common use as a synonym for county, although it was formerly applied to smaller divisions of territory than a county.

The administration of a county before the Norman Conquest was in the hands of two officers, the earl (ealdorman) and the

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sheriff (scirgerefa), but after William the Conqueror the earl was less prominent in the administration of the county and the sheriff became the principal officer of the Crown. The sheriff remained the principal officer in the county until the fourteenth century, when his military functions were taken from him and were transferred to a Lord Lieutenant, appointed directly by the Crown or by the Chancellor, and responsible to the appointing power. In the seventeenth century, when the first English settlers left for the shores of America, there were five distinct officers in each county: —

(1) Lord-Lieutenant, head of the military system, appointed by the Crown.
(2) Sheriff, the chief conservator of the peace and the executive agent of the judicial courts, appointed by the Crown.
(3) Justices of the Peace, appointed by the Crown and forming in each county a quarterly court of criminal jurisdiction, and acting as the fiscal and administrative authority for county affairs.
(4) Coroners, chosen in the county courts; their duties related to inquests on deaths by violence.
(5) Commissioners, appointed by county courts to assess taxes.

2. Translation to Massachusetts.

There are three types of counties in the United States, represented by those in New England (Massachusetts), those in the South (Virginia), and those in the West (Michigan, Illinois, Indiana and California), and the county has been given more attention in the two latter sections of the country than in the New England States. In the New England States the county is principally a judicial district, created for the administration of justice, and is not a unit for the administration of the legislative functions of the Commonwealth nor for political organization. In the South it is independent of State control in administrative matters, and in the West it is being allowed an ever-increasing freedom in legislative administration.

County administration has received most attention in the western States, where its importance as a governmental unit has been emphasized, Michigan having recently given large legislative powers to its county boards. In New England, however, on account of the highly centralized judicial system, and the importance of the towns and cities, the county exercises very

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little independent jurisdiction. Thus in many States the county is often organized as a school district or as a sanitary district, but this is not true of Massachusetts or of any other New England State. In Massachusetts the character of the county government has remained almost quiescent for a century or more, no fundamental change having taken place during that period. As early as 1643 there were four counties established in Massachusetts for judicial purposes. They were the counties of Suffolk, Middlesex, Norfolk and Essex, and before the Revolution twelve of the present fourteen counties in Massachusetts were incorporated. The number of counties varies in different States. Thus Texas has 243, Rhode Island 5 and Delaware 3.

The early county officials were appointive, acting on the English model (although sheriffs were elective in Pennsylvania in 1705), but after the Revolution a radical democratic and decentralized system was established. County officials in Massachusetts were made locally elective and their numbers were increased.

II. GROWTH AND DEVELOPMENT OF COUNTY OFFICES IN MASSACHUSETTS.

1. Colonial Period.

The Massachusetts Bay Company was organized in England for the establishment of a colony in New England. Under a charter granted by King Charles I, the colonists came to Massachusetts Bay in 1630 and established a colony at Boston.

The charter provided that the officers of the company should consist of a Governor, Deputy Governor and eighteen Assistants. These officers were to be chosen annually by a General Court, which consisted of the charter officers and the freemen of the colony.

This General Court was directed by the charter to sit four times a year to make laws for the colony. In addition, there was provided a Court of Assistants, consisting of the Governor, Deputy Governor and the assistants, sitting each month, "for the better ordering and directing of affairs."

Originally all malefactors were brought before the General Court for trial and punishment, but this being found a burden

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and not conducive to the speedy administration of justice, the Court of Assistants on August 23, 1630, authorized the Governor and the Deputy Governor and four other citizens whom they named to be justices of the peace with power to reform abuses and punish offenders.

As the colony grew rapidly in number of settlers, and their dwellings and places of labor spread beyond easy reach of the first settlement, the authorities found it inconvenient to bring all cases to Boston, and on March 3, 1635, the General Court established Quarter Courts at Ipswich, Salem, New Towne and Boston, these to be kept by such magistrates as dwelt in or near said towns, and by such others as were appointed by the General Court, so as to make four in number. These courts had jurisdiction over all criminal cases, except capital, and all civil where the debt or damage did not exceed £10. At the same time a Great Quarter Court, or a court of appeal, was established at Boston, consisting of the Governor and assistants.

At the beginning of 1639, therefore, the judicial system had these divisions: first, the General Court sitting twice a year; second, the Court of Assistants or Great Quarter Courts, composed of the Governor, Deputy Governor and assistants, sitting four times a year at Boston; third, the four inferior courts (or Quarter Courts) kept by magistrates, with associates appointed by the General Court.

In that year, however (1639), the law was amended so that the Court of Assistants sat only twice a year at Boston to hear appeals from the inferior court, causes of divorce, capital and such criminal offences as would merit death or banishment. At the same time "County Courts" were established, though the counties had not then been set off. These were the old inferior, or Quarter Courts. The manner of choosing the members of the court was not changed, but each court was given authority to establish its own clerk and other needful officers.

In the same year a Strangers' Court was established, to consist of the Governor, Deputy Governor and any two magistrates, or, when the Governor was not available, any three magistrates. This court was authorized to hear and determine all causes which should arise between strangers, or in which a stranger was a part.

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For the proper oversight of the business of the colony it was ordered by the General Court, on September 9, 1639, that a record should be kept at Boston of all wills, administrations, inventories, births, deaths and marriages by a recorder. In the next year, October 7, for greater convenience, recorders' offices were also established at Ipswich and Salem and the recorders were designated as the clerks of the courts held in each town.

Two years later, on June 14, 1642, again for greater convenience, the General Court established the office of clerk of the writs (corresponding to present town and city clerks) in each of the towns, the appointments to which were made by the General Court. These officials took from the formerly established recorders the task of recording births, deaths and marriages.

The number of towns having grown to 30 and being scattered over a wide territory, for the greater convenience again of the administration of the business of the colonists, by act of the General Court on May 10, 1643, the colony was divided into four "sheires" or counties, to be known as Essex, Middlesex, Suffolk and Norfolk. Each was authorized to conduct its own affairs, but the act creating them did not specify the offices to be established. Each county, however, established an organization along the lines of the county organization of England.

The above mentioned Norfolk contained largely towns that were included in New Hampshire when that become a royal province. The county became extinguished in 1679, and Ipswich, the "sheire town," and the other Massachusetts towns in that county became a part of Essex County.

In 1647 the General Court gave each county court the authority to appoint clerks of the writs for each town, which relieved the General Court of this task. Also in order to relieve the county courts of small causes, the General Court passed an act authorizing any magistrate (member of the assistants) where he dwelt to hold court for cases arising in his home town or district, wherein the debt, trespass or damage did not exceed 40 shillings; and it was further ordered that in such towns where no magistrate dwelt, the court of assistants, or the county court, could appoint three freemen to sit as commissioners to hear such cases. In these towns the clerk of the writs had the power to issue summonses, etc., to secure the attendance of witnesses, etc.

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In 1651 the General Court enacted a law providing that seven freemen selected by the freemen of Boston should serve as commissioners for Boston to hear and determine civil actions not exceeding ten pounds. These commissioners were authorized to appoint a clerk, to fix fees for entry of cases, and to pass upon misdemeanors as would any magistrate, provided the fines imposed did not exceed forty shillings for one offence. This court lasted, however, only one year.

In 1652 the offices of recorder and clerk of the county courts were officially merged, though the duties of each office were previously performed invariably by one and the same person.

By an act of the General Court on May 3, 1654, the counties were each authorized to elect a county treasurer, who should apportion and collect the county rates, or taxes. The next year each county was ordered by the General Court to establish a House of Correction.

On April 29, 1668, the General Court authorized each county to have two commissioners appointed by the General Court, whose duties were to repair warehouses, supervise the business of the county, and principally list the taxpayers and assess the taxes.

On May 27, 1685, each county was authorized to probate wills, the duty originally of the Governor and the Court of Assistants, and each county court was designated as the Court of Probate for the county.

In this year also the General Court authorized the establishment of a court of chancery, to consist of the magistrates of each county court, to pass upon cases wherein there was apparent equity, and authorized the county courts to hear and determine all cases relating to wills and administrations.

Summary to 1684. — At the end of the Colonial Period in 1684 these county courts and offices had been established: —

Magistrates' Court in each town (1647).

Quarter courts (1635), which became "County Courts" (1659), at Ipswich, Salem, New Towne (afterwards Cambridge) and Boston.

Strangers' Court for the colony (1639).

Court of Assistants, sitting twice a year at Boston (1639), which originally sat, according to the charter, once a month and according to act of 1635 sat four times a year.

Recorder of wills, administrations and inventories at Boston (1639), and at Ipswich (1640) and Salem (1640).

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Clerks of the Writs in each town (recorder of births, deaths and marriages), appointment by General Court (1642), appointment by County Courts (1647).
Counties established at Essex, Middlesex, Suffolk and Norfolk, each having its own organization (1643), (Norfolk extinguished in 1679); Hampshire (1662).
Offices of County Recorder and Clerk of County Courts officially made one and same office (1652).
County Treasurer in each county (1654).
Two County Commissioners in each county (1668).
Each county court a court of probate (1685).
Court of Chancery (1685).

The colony charter became vacated in 1684, and in 1686 Joseph Dudley assumed the office of President by royal appointment, with a deputy president and fifteen councillors. They became a court of record for the trial of civil and criminal matters, with authority to establish courts and appoint judges over them. They set up a Superior Court (a majority of the councillors) to sit three times a year at Boston, and a Court of Pleas and Sessions of the Peace in each of the counties.

The next year saw another change in the government, with the arrival of Sir Edmund Andros with a commission as Governor, his jurisdiction to include all New England, which brought Plymouth Colony for the first time under the same authority as the Massachusetts Bay Colony. The Governor and thirty-nine councillors appointed by him became the lawmakers. They gave jurisdiction in cases concerning lands, not involving a sum of forty shillings, to justices of the peace; established a "Quarterly Sessions Court," held by the several justices in their respective counties, and an "Inferior Court of Common Pleas," to be held in each county by a judge assisted by two or more justices of the county, with jurisdiction in Boston limited to twenty pounds and the court ordered to sit there once in two months, and with a limitation to ten pounds in other counties where the court would sit once a year.

A Superior Court of Judicature was established, evidently the highest court of appeal, and it sat in each county.

Up to this time each county had had an executive officer originally called the beadle, and from an early period till Governor Andros's time, the marsbal. Governor Andros changed the name to sheriff, and this it has remained to the present day.

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In 1699 to the duties of the sheriff as executive officer of the courts were added the duties of keeper of the county jail. It was provided in this latter act that the salary should not exceed thirty pounds in Suffolk and ten pounds in other counties.

In 1689, when the news of the revolution in England reached New England, the colony went back to its old form of government as it had existed in 1686.

2. Provincial Period.

In 1692 a new charter granted by William and Mary reached the colony for the "Province of Massachusetts Bay in New England," comprising Massachusetts, Plymouth, Maine and Nova Scotia. This charter provided for a Governor, Lieutenant-Governor, and a Secretary, all appointed by the King, a board of twenty-eight councillors chosen by the General Court, and a House of Representatives chosen by the people. This charter gave the Governor and a council of at least seven councillors or assistants the authority to order and direct the affairs of the Province. The Governor, with the advice and consent of the Council, was authorized to appoint, among others, the judges, sheriffs and justices of the Courts of Justice. The charter recognized the greater importance of Suffolk County by stipulating that the sheriff in Suffolk County should be paid not to exceed thirty pounds, and not to exceed ten pounds in other counties. This charter gave the Governor and Council authority to probate wills.

Following the arrival of this charter and acting under it, various acts were passed by the General Assembly for the establishment of courts, which administered the laws until 1699, but were each in turn disallowed by the Privy Council at London for one reason or another. Finally, however, in May, 1699, the General Assembly did pass laws establishing courts which stood the test of the Privy Council.

The first of these acts provided for a Court of General Sessions of the Peace, held by the justices of the peace in each county, with jurisdiction over matters relating to the conservation of the peace and the punishment of offenders. This court held jury sessions.

The second act provided for the establishment of an Inferior Court of Common Pleas in each county, held by four persons

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appointed as justices of the court, who should have cognizance of all civil actions within the county triable at common law. This also had jury sessions.

The third act provided for a Superior Court of Judicature for the whole province, which was a court of appeal from the other two mentioned courts and was to be held at specified times in each county. These courts continued during the whole of the provincial period to 1781.

When the history of the province reached the post-revolution period and the Commonwealth of Massachusetts was established, these distinctly county offices are shown to exist: —

Court of General Sessions of the Peace (1699).
Inferior Court of Common Pleas (1699).
Sheriff (1687); as keeper of jails in each county (1699).
Clerk of Court (1639), re-established (1699).
Register of Deeds (1715).
Judge of Probate (1692).
Register of Probate (1692).
County Treasurer (1654) (1692).
County Commissioners (1668).
County House of Correction (1654); sheriff to be keeper (1699).

3. The Commonwealth Period.

The new "Commonwealth of Massachusetts" in 1780 adopted a constitution which continued all the court offices existent in the final days of the province, but changed the name of the "Superior Court of Judicature" to the "Supreme Judicial Court of the Commonwealth of Massachusetts."

In 1782, by act of the General Court, the "Inferior Court of Common Pleas" became the "Court of Common Pleas," to be kept as before in each county by four judges appointed from within the county.

By an act of 1811, it was enacted that the Commonwealth, except Nantucket and Dukes County, be divided into six circuits, and that there should be a Circuit Court of Common Pleas, to consist of a chief justice and two associate justices, in each circuit to sit in each county at regular periods. This court superseded the old "Court of Common Pleas."

By an act of 1813, Suffolk County was taken out of this circuit and was given a court of its own, known as "The Boston Court of Common Pleas."

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By chapter 79, Acts of 1820, the Legislature established the Court of Common Pleas as a court of the Commonwealth and not limited to any circuit or county, to supersede the Circuit Court of Common Pleas and the Boston Court of Common Pleas. This was abolished in 1859, when the present Superior Court was established.

Meanwhile, the Court of General Sessions of the Peace, established in 1699, and renewed by the adoption of the State Constitution, saw its first change in 1807, when an act provided that it should be held in each county by one chief justice and a differing number of associate judges in each county as a "General Court of Sessions." In 1809 its jurisdiction was transferred to the "Court of Common Pleas," but this act was repealed in 1811 and the "General Court of Sessions" revived, with the Governor empowered to appoint a chief justice and not more than four or less than two associates in any county.

By chapter 197, Acts of 1813, the act of revival of the General Court of Sessions was repealed except so far as Suffolk, Nantucket and Dukes County were concerned, and the jurisdiction of the court was transferred to the Circuit Court of Common Pleas. By this act the Governor was authorized to appoint two persons in each county to be session justices, and to sit with the Circuit Court of Common Pleas, with jurisdiction over all matters formerly under the Court of Sessions.

By chapter 120 of the Acts of 1818, there was another change and the Court of Sessions was established in each county with a chief justice and two associates. This act repealed the act which had transferred the duties of such a court as the Circuit Court of Common Pleas.

In 1821, the Court of Sessions for Suffolk County was abolished, and its duties with regard to streets and ways and with regard to all other suits, processes, and proceedings in which a trial by jury may be had were transferred to the Court of Common Pleas, and certain other duties were transferred to the mayor and aldermen in Boston.

The reason for this abolishing of the Court of Sessions in Suffolk was the fact that much earlier it had been found that, owing to the peculiar situation and circumstances of the Town of Boston as a metropolis and great seaport town, the usual

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mode of enforcing the laws and administering justice in criminal cases was attended with great delays and burdensome expenses, and special courts for Suffolk had been established.

By chapter 81, Acts of 1799, the Municipal Court of Boston had been constituted to have cognizance of all crimes and offences within Boston, previously cognizable in the Court of General Sessions of the Peace (all crimes in the county of Suffolk, except capital). One judge named by the Governor presided over this court until 1843, when by a new act it was provided that the judges of the Common Pleas Court should be, ex officio, the judges of the Municipal Court.

This court continued until April 5, 1859, when its jurisdiction passed to the present "Superior Court of the Commonwealth."

These courts (*i.e.*, a court of Common Pleas of the Commonwealth to sit at stated times in each county, and a Court of Sessions in each county, except Suffolk, and a Municipal Court for Boston) continued thereafter until 1855, when the Legislature added a "Superior Court of the County of Suffolk." This was to supersede in Suffolk the "Court of Common Pleas of the Commonwealth," and the city of Boston was required to pay the expenses of this court.

In 1859, however, the court thus established in Suffolk was abolished, as was also the "Municipal Court," and both were superseded by the present Superior Court of the Commonwealth.

The present day Police and Municipal Courts are descended from the courts of the justices of the peace, consisting of the Governor, Deputy Governor, and four other citizens named by the General Court in 1630 "for the reformation of abuses and the punishment of offenders."

During Colonial days the magistrates, who were the members of the upper house of the Legislature, were the justices of the peace, and in towns or districts where there was no magistrate, the General Court appointed justices. By the authority of the charter of William and Mary the Governor was given authority to name the justices of the peace, and courts of these were established by statute in 1697 and were the lowest courts of the provincial period, as they were of the colonial period. These justices were scattered throughout the province, each town usually having one or more.

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After the establishment of the Commonwealth, the Legislature, for similar reasons to those which caused the creation of a Municipal Court for Boston in 1800, established the first police court at Boston in 1822, consisting of three justices. This court was authorized to hold daily sessions and to have cognizance over matters formerly cognizable by justices of the peace. A division of this court to sit on two days a week, styled the "Justices Court for the county of Suffolk," was established at the same time to have jurisdiction over civil matters formerly cognizable by a justice of the peace. These two divisions remained distinct until 1860, when it was enacted that the records and jurisdiction of the civil branch be transferred to the "Police Court." Police Courts similar to the Boston Police Court were established in Salem, 1831; Lowell and Newburyport, 1823; New Bedford, 1834; and at later dates in various other cities, the expenditures of each being borne by the counties in which they were located.

In 1868 the present Municipal Court of the City of Boston was established. The other municipal courts of the different districts of Boston have been established at different dates since 1866, the Municipal Court of the Charlestown District being originally the Police Court of the City of Charlestown, established in 1862.

Since the revision of the statutes which resulted in the "General Statutes of 1860," the Municipal Courts of Boston and of the districts of Boston have developed. The first act along this line was in 1866, when the Legislature established the Municipal Court of the City of Boston to supersede the old Police Court of Boston. In the following year the Legislature established in the southern end of the city a new court known as the Municipal Court of the Southern District (formerly the old Police Court of the City of Roxbury), which in 1874 became the "Municipal Court of the Highland District." In 1870 the Municipal Court of the Dorchester District was established.

In 1873 the Municipal Court of the Charlestown District superseded the old Police Court of Charlestown.

In 1874 the Municipal Courts of Boston, East Boston, South Boston and West Roxbury districts were established. The Municipal Court of the East Boston District was changed afterwards in name to the East Boston District Court, in 1886.

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These courts are now and always have been wholly independent of each other, each with its complete and fully equipped organization, with local justices exercising their functions without consultation or conference and without any central supervision. Besides these, or outside the city of Boston, there has been only one court given the title of "municipal court," viz., the police court of Brookline, which name was later changed to the "Municipal Court of the Town of Brookline."

As far back as the establishment of the Salem police court in 1831, there have been courts in other counties similar in jurisdiction to the Police Court (Municipal Court) of Boston. They became established as the need for them appeared, and the first dozen established were called Police Courts, while the remainder became District Courts of the different counties. In all cases the expenditures were paid by the counties, towns and cities in each county bearing an apportioned share.

In the case of the cities of Chelsea and Revere and the town of Winthrop in Suffolk County, however, they were freed from all county of Suffolk expenses by an act of 1831 (chapter 65), which provided that the City of Boston should thereafter pay the bills of Suffolk County in return for a relinquishment by Chelsea (which then included the territory of Revere and Winthrop) of all its title to county institutions. Attempts were made in 1911–1915 to have these communities bear some of the expenses of Suffolk County, but without result.

III. COUNTY GOVERNMENT IN THE VARIOUS COUNTIES OF THE COMMONWEALTH.

1. Political.

Voting Districts for Representation in the General Court.

There are at the present time in Massachusetts fourteen counties, as follows: Suffolk, Essex, Middlesex, Hampshire, Plymouth, Bristol, Dukes, Barnstable, Nantucket, Worcester, Berkshire, Franklin, Hampden and Norfolk, the oldest counties being Suffolk, Essex and Middlesex, which were incorporated in 1643. The other counties were incorporated in the period from 1662 to 1812.

The Constitution of Massachusetts, adopted in 1780, left the form of county administration as it then existed, but made the

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several counties of the Commonwealth the basis of the districts for the choice of Councillors and Senators (See Constitution of Massachusetts, Chapter 1, Section 2, Article I.) and fixed the total number of such officers at forty, which should be distributed among the several counties according to population. Thus in Suffolk and Essex it was provided that there should be six Councillors and Senators; Middlesex, five; Plymouth, three; Barnstable, one; Bristol, three; etc., and it also provided that the General Court should have power to alter the said districts. The total number of Councillors and Senators (forty) has remained the same up to the present time, although the allotment to the several counties of the State has been altered. Thus at the present time Suffolk has nine members in the Senate, Middlesex has eight, Plymouth has been reduced to two, Essex reduced to five, and Worcester to four.

The county is also maintained as the unit for the election of members to the House of Representatives, the general law directing that the House shall consist of two hundred and forty members who shall be apportioned by the Legislature after each decennial census, according to the number of legal votes in each county. In counties other than Suffolk, after the Legislature has so designated the number of Representatives in the General Court, the county commissioners meet on the first Tuesday in August at the "shire" town and proceed to divide the counties into representative districts of contiguous territory. In the county of Suffolk, however, there is a special board of commissioners to perform this duty.

By chapter 560 of the Acts of 1907, it was provided that at the annual State election in the year 1915 and in every tenth year thereafter, nine commissioners shall be elected for the county of Suffolk whose duties it would be to apportion the county of Suffolk into representative districts of contiguous territory as nearly equal in population as possible.

2. Elective and Appointive Officers.

For the purpose of administering the government of the counties there are a number of officers, some of whom are elected by the voters in their respective counties and some of whom are appointed by the Governor. The elective officers are as follows: —

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(1) County commissioners and associate commissioners.
(2) Clerks of the Superior Court (and in Suffolk County the clerk of the Supreme Judicial Court for Suffolk County).
(3) Sheriffs.
(4) County Treasurers.
(5) District Attorneys.
(6) Registers of Deeds.
(7) Registers of Probate and Insolvency.

The appointive officers (in all cases by the Governor, generally with the consent of the Executive Council) are: —

(1) Justices of the municipal and district courts in the various cities of the county.
(2) Clerks of these said district and municipal courts.
(3) Medical and Assistant Medical Examiners.
(4) Controller of County Accounts.

This organization is common, with slight variations, to all the counties of the State, and in order to have a comprehensive idea of the functions and duties of these officers they will be described in detail.

Elective Officers.

(a) *County Commissioners.*

The county in Massachusetts is a legal corporation for limited purposes. It is a "body politic and corporate," which can sue and be sued, may purchase and hold for the use of the county personal estate and land lying within its limits, and may make necessary contracts.

The chief administrative officers to perform these duties are the county commissioners.

County commissioners were appointed, two to each county, as early as 1668. Their duties originally were to list the taxpayers and assess the taxes. The importance of the offices grew until, following the adoption of the Constitution of the "Commonwealth of Massachusetts," their duties included: —

1. The making of estimates of the sums necessary to defray the county charges (1781).
2. The apportionment of the county taxes (1781).
3. The erection and repairing of court houses, jails and other necessary public buildings (1784).
4. The examination of the receipts and expenditures of the moneys of the county (1785).

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5. The laying out, discontinuance and altering of highways (1786) (1827).
6. The making of estimates of the county charges and sending them to the Secretary of State (1811) (1834).
7. The examination and allowance of county treasurer's annual accounts (1811) (1834).
8. The publishing of the annual statement of the county expenses.

The county commissioners were appointed by the Governor until 1835, when an act was passed providing for the election of three in each county, except Nantucket and Suffolk. In 1821 it was enacted that the mayor and aldermen of Boston within the county of Suffolk should exercise like powers and perform like duties as the county commissioners in other counties.

With the exception of the counties of Suffolk and Nantucket, each county in the Commonwealth still has three county commissioners elected by the voters of the county, one member being elected each year, and the board organizing on the first Wednesday in January. The salaries paid to these commissioners are fixed by statute, and range from $400 in the county of Dukes to $2,000 in Essex and Middlesex. This represents the entire compensation of the commissioners. By chapter 451 of the Acts of 1904 the counties of the Commonwealth, for the purpose of establishing the salaries of the county commissioners, clerks of the courts and county treasurers, were divided into nine classes, the basis for the classification being population.

The commissioners are directed by law to hold meetings in their respective counties at certain times and in certain places.

The duties of the county commissioners at the present time are to provide for erecting and repairing court houses, jails and other necessary buildings within and for the use of their county, to represent the county and to have the care of its property and the management of its business and affairs in all cases not otherwise expressly provided for; and to establish a seal of their county, to be placed in the control of their clerk, and to be affixed to all processes issued by them in cases in which a seal is required.

They are also charged with the laying out and the discontinuance of ways, which is one of the most important of their duties. Ways include not only highways but also bridges and roads. The jurisdiction of the county commissioners over such

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work is not limited to county ways alone, but in cases of necessity the county commissioners are given power to order specific repairs to ways in towns, the expense of which may be apportioned between county and town as in the case of highways.

Petitions for a new highway or for the alteration or discontinuance of an existing highway presented to the county commissioners must be accompanied by a recognizance with a surety to cover the expense of the petition in case the petitioners do not prevail. If the petition is not objected to and the town within which such improvement is prayed for has been duly notified, the county commissioners still have discretionary power to inaugurate the improvement. The law states that the Commissioners may "within six months thereafter [the date of the hearing] lay out or alter the same without further notice." On a petition for discontinuance of a highway two steps on the part of the county commissioners are necessary:

(1) View of the road and an adjudication either at that time or later that the road should be discontinued and an assessment of damages.

(2) Return of these proceedings and adjudication at the next regular meeting of the board.

Taxpayers who are aggrieved by the refusal of the local assessors to abate a tax may appeal to the county commissioners by filing an appeal with their clerk within thirty days after receiving notice of the refusal of the assessors. County commissioners, after hearings on this matter, have power to make a reasonable abatement if the property has been overrated.

The State Tax Commissioner may also use the county commissioners as a tax appellate body by requiring a corporation to appeal to it from the valuation placed by the local assessors upon its works and property. If such an appellate order is issued by the Tax Commissioner the decision of the county commissioners on the question of value is conclusive.

Upon the neglect or refusal of local boards of health to abate a nuisance, persons aggrieved may appeal to the county commissioners, who in such cases may exercise all the powers of the board of health, if it is found to be necessary.

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County taxes are levied by the county commissioners after the expenses for the year have been estimated by the General Court.

In the county of Suffolk the aldermen of the city of Boston (now the City Council) still have the powers of county commissioners, and in the county of Nantucket these powers are reposed in the selectmen of the town of Nantucket.

As compared with the powers of county commissioners in the Middle and Southern States, those of the county commissioners in Massachusetts and in other New England States are more limited. In Vermont two assistant county judges act as county commissioners, and their duties are confined to judicial administration and to financial accounts in connection therewith. In Connecticut, Maine and New Hampshire the county commissioners consist of three members, but their powers are different. In Connecticut (term four years), besides the care of county buildings, jails and homes for dependent children, they have control of liquor licenses and repairs on highways. In New Hampshire (term two years) they have the care and custody of county property and buildings of county paupers, supervision over the superintendent and other officers of the county farm, jail and houses of correction; they purchase and sell real estate of the county, audit claims against or for the county, issue county bonds and supervise county records. In Maine (where they are elected biennially for six years) they make up the estimates and cause taxes to be assessed in towns for county purposes, have charge of the fiscal accounts and legal matters, and have care of the highways and jails and the general executive business of the county.

In case a vacancy occurs in the office of county commissioner in Massachusetts, the remaining commissioners and the clerk of courts may appoint a temporary commissioner until a new one is elected. In New Hampshire the Supreme Court appoints. In Vermont and Connecticut the Governor alone has the power. In Maine the Governor, with the advice and consent of the Council, appoints a temporary commissioner. Official misconduct (Maine, New Hampshire or Massachusetts) or failure to file a new bond when so requested by the State Treasurer (Connecticut) are generally grounds for removal of a county commissioner.

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In all the New England States except Massachusetts, county commissioners are required to give bonds, which are approved by the higher court or by the State Treasurer.

(*b*) *Clerks of Courts.*

The General Court originally appointed clerks of courts, but in 1639 authorized the justices of each court to appoint clerks of courts or county clerks to serve the four courts which had been established in 1635. During the colonial period their duties were constantly added to. After the arrival of the charter of William and Mary, however, the General Court authorized the justices of each of the Superior Courts of Judicature, the Inferior Courts of Common Pleas, and the General Sessions of the Peace to appoint each its own clerk in each county. This method of appointment continued during the provincial period.

Under the State government, by chapter 8 of the Acts of 1811, the Governor was authorized to appoint a clerk for all courts in each county. By chapter 77 of the Acts of 1813, the right to appoint such clerks was taken from the Governor and given to the Supreme Judicial Court.

By chapter 129, Acts of 1830, in section 1, the justices of the Supreme Judicial Court were authorized to appoint "one or more" clerks of courts in each county for terms of five years, and in section 4 the salary of the clerks was fixed.

Under authority of this last-mentioned act, the justices of the Supreme Judicial Court made appointments in Suffolk County to the offices of clerk of the Supreme Judicial Court and of each of the courts corresponding to the Superior Civil and Superior Criminal Courts as they now exist. In all other counties only one clerk of courts was provided. By an amendment to the Constitution accepted in 1855, clerks of courts in each county became elective officers; and chapter 173, Acts of 1856, provided for the election of a clerk of courts in each county except Suffolk, and in Suffolk for the election of a clerk of the Supreme Judicial Court, a clerk of the Superior Court, and a clerk of the Municipal Court of said county every five years. In 1857 it was provided that the clerk of courts in each county should be clerk to the county commissioners.

By an act of 1859, however, the office of clerk of the Supreme Court for the Commonwealth became a separate office, ap-

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pointment to which was by the justices. Also by an act of 1859, as before stated, the court system was again revised, with the result that since then there have been a Supreme Judicial Court and a Supreme Court of the Commonwealth sitting in each county separately. This latter act provided that there should be an election of two clerks in Suffolk County, one for the civil and one for the criminal business of the county, and of only one clerk in every other county, who should also be clerk of the Supreme Judicial Court for those counties. In 1877 (chapter 210, section 1) the Governor was authorized to appoint clerks for police, district or municipal courts for a term of five years, and this method is at present in vogue.

County clerks of courts are elected at the annual State election to serve for a term of five years in all counties of the State, the clerk so elected acting as clerk of the courts, viz., Supreme Judicial Court, Superior Court and the County Commissioners. In the county of Suffolk there are still three clerks of courts, viz., clerk of the Supreme Judicial Court of Suffolk County, clerk of the Superior Court, Civil Session, and clerk of the Superior Court, Criminal Session.

In case of a vacancy in the office of the clerk of the court in any county or the clerk of the Supreme Judicial Court in the county of Suffolk, the justices of the Supreme Court appoint a person to hold office until a new clerk is appointed and qualified.

Salaries of the clerks of court are graded according to the population of the county where they serve, the Commonwealth for the purpose of their compensation being divided into nine classes, class (*a*) being the lowest paid, and class (*i*) the highest. Salaries paid clerks of court range from $600, in the case of Nantucket and Dukes counties, to $6,000, in Suffolk and Middlesex counties, with the exception of the clerk of the Supreme Judicial Court of Suffolk County, who receives $6,500 a year, $5,000 paid by the county of Suffolk and $1,500 by the Commonwealth.

The annual salaries paid to the clerks are full compensation for all services rendered by them, either in the civil or the criminal court, to the county commissioners, or in the form of any official act, except for such clerical assistance as may be

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allowed them. In all counties except Suffolk and Nantucket the clerk of the Superior Court acts as a member of the board of examiners of election returns, for which he receives a salary of $5 a day for every day so employed and 10 cents a mile for traveling. This board meets on the first Wednesday in the month following the election of the county commissioners, or associate commissioners, determines what persons are elected, issues certificates of election to them and gives notice to the Secretary of the Commonwealth. The clerk of the court, moreover, has the custody of the county seal and of the court records, for which he is responsible. The Controller of County Accounts has jurisdiction over the clerk's financial records and must examine them at certain stated intervals. The county treasurer is ineligible to the office of clerk of court.

Assistant clerks of the Superior Civil Court and the Supreme Court for the county of Suffolk are appointed by the justices of the Superior Civil Court and the Supreme Court respectively. They are sworn officers and act as deputies for the clerk of the court in attendance at various sessions of the court, and receive salaries ranging from $3,500 for the county of Suffolk to $2,000 for the assistant clerk of the county of Hampden. Assistant clerks of municipal, district or police courts are appointed by the clerk of the court subject to the approval of the justices of that court.

Clerks of courts are appointed by the judges of the court which they serve in New Hampshire, Vermont, Rhode Island and Connecticut; their appointment in New Hampshire is for an unlimited period, in Vermont for two years, in Rhode Island for three years, and in Connecticut for one year. In Maine they are elected for four years.

Shorthand reporters, who take the testimony of witnesses, and probation officers in all courts are appointed by the court. Clerical assistants (clerks, stenographers, copyists and typists) are generally appointed by the clerk of the court.

(c) *Sheriffs.*

A sheriff is elected by the voters of each county at the State election, for a term of office of five years. Before he can perform any official act he is required to take an oath to perform

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the duties of his office in an honest and efficient manner and to be responsible for the acts of his deputies, and he must give a bond therefor with such sureties as the Superior Court orders and approves. He has the power to appoint deputies, who shall be sworn, and is directed to appoint, within his county, a special sheriff. The special sheriff has the authority of a deputy sheriff; and when the sheriff is absent or unable to perform those duties which cannot be performed by any of his deputies, they are performed by the special sheriff. In the case of a vacancy in the office of sheriff, the Governor, with the advice and consent of the Council, may appoint some person until a sheriff is elected and qualified.

The sheriff has duties in connection with both the civil and criminal sides of the court. His duties on the civil side consist mainly in serving writs in actions in court, either by himself or through his deputies, and in acting as a member of the board of examiners. In certain cases this board of examiners has jurisdiction over the election returns for county commissioners or associate commissioners.

His duties on the criminal side consist of the custody of the county jail and of the inhabitants therein, and of attendance upon the court, and in assisting the district attorney of the county in his enforcement of justice.

Annual salaries are provided for sheriffs according to statute law, ranging from $300 in Barnstable and Dukes to $3,000 in Suffolk, Middlesex and Essex, and they may also retain for their own use the fees received by them for the service of process. In addition the sheriffs of the counties of Plymouth, Essex, Worcester and Norfolk are allowed necessary travelling expenses, the amounts varying in each county. If the sheriff also acts as jailer or master of the house of correction, he may receive additional compensation of not more than $1,000 a year.

All other fees received by the sheriff, however, or by his deputies, exclusive of the fees received by them for the service of process, are to be turned over to the county treasurer and an account made under oath of the money so received.

The sheriff may appoint deputy sheriffs, who are responsible to him, who receive no salaries from the Commonwealth or the county, but are paid from the fees received for the service of

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civil processes. The sheriff also has power to appoint, subject to the approval of the justices of the Superior Court, officers for attendance upon the several sessions of the court. In the county of Suffolk not more than four officers may be appointed for each session for civil business with a jury, three for a session without a jury, and six for the session for criminal business.

In the Probate Court of Suffolk County the court officers are appointed by the judges of that court. In the county of Middlesex the court officers are appointed by the sheriff and assigned by him to the various civil, criminal and probate sessions of the Supreme, Superior and Probate Courts. Messengers for the Supreme, Superior and Probate Courts are also provided for by special statute. The compensation of all these court officers and messengers ranges from $1,300 to $2,000 a year.

With the exception of Rhode Island, sheriffs of all the New England States are elected, the terms ranging from two years in Maine, New Hampshire and Vermont, to four years in Massachusetts and Connecticut. In Rhode Island the sheriff is appointed by the Legislature for a term of five years. In all these States the sheriff has the power to appoint one or more deputies who are responsible to him.

Bonds are required in all cases, but the approving powers differ. In New Hampshire, Vermont and Rhode Island the court approves the bond; in Maine the county commissioners and in Connecticut the Governor. The amount of the bond, moreover, varies from $25,000 to $40,000 in Maine, $30,000 in New Hampshire, and in other States of the New England section the amount of the bond is less. Sheriffs may be removed in Massachusetts, New Hampshire, Rhode Island and Connecticut by the Supreme or Superior Courts.

(*d*) *County Treasurers.*

The office of county treasurer was originally established by the General Court of the Massachusetts Bay Colony in 1654, when each county was authorized to elect a treasurer. Following the charter of William and Mary, the General Court in 1692 again voted that the counties as then existent should be continued and each should elect a county treasurer.

With the exception of Suffolk and Nantucket, all of the counties in the State are now required to elect every three years

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a county treasurer. He must be a resident of the county which he serves and must take an oath before the county commissioners faithfully to perform the duties of his office, and for wilful violation of duties imposed upon him he shall forfeit not less than $50 nor more than $1,000, to be recovered in an action brought by the Attorney-General for the use of the county. In the counties of Suffolk and Nantucket, the city treasurer of Boston and the town treasurer of Nantucket respectively act as county treasurers of their counties, and no person holding the office of Attorney-General, district attorney, judge of the Superior Court, clerk of the court or sheriff can be county treasurer.

In case of vacancy in the office a temporary treasurer may be appointed by the county commissioners until the election of a new treasurer, except in the counties of Suffolk and Nantucket, where the general law regarding the appointment of city treasurer and town treasurer governs.

The county treasurer is provided with an office in the county building. The duties of county treasurers are to keep an account of all the financial transactions of the county, receive bonds from the clerks of the courts, medical examiners, registers of deeds, trial justices and justices of the district and police courts; to deposit all cash of the counties in the national banks, and to pay out the money in their possession for the support of the county departments. The treasurer has also the duty of receiving fees, fines and forfeitures, receipts from prison industries, and money paid into court, as well as the sheriffs' fees and taxes levied by the county commissioners on cities and towns. He also has the duty of notifying the district attorney of default in the payment over to him of money paid to the clerks of courts.

For the purpose of compensating the county treasurers, the counties are divided into nine classes, compensation being based upon the population in each county. In the counties having less than 15,000 people (Nantucket and Dukes), the county treasurer receives $300; in counties having a population of 500,000 or more, as in Middlesex, the treasurer receives $3,500. The treasurers of Bristol, Middlesex and Worcester are allowed their actual and proper travelling expenses in addition to their salaries.

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The county treasurers are allowed to employ clerical assistants for the proper conduct of all their business. The amount to be spent for this purpose is limited by legislative acts, and the treasurer cannot spend an amount greater than that allowed until a further authorization is given.

County treasurers are found in all the States of New England except Rhode Island. They are elected in Maine and New Hampshire, but are appointed in Connecticut by the board of commissioners and in Vermont by the two commissioner judges. The term of office in these four States is two years.

Bonds approved by the county commissioners are required in all these States.

(*e*) *District Attorneys.*

The office of county attorney was established in 1807 for Suffolk County, the manner of filling the position being by appointment by the Governor. In 1832 the State was divided into districts and to each a district attorney was assigned. For Suffolk County (which comprised a separate district) an "attorney for the Commonwealth" was authorized to be appointed by the Governor. In 1855 a law was passed making these officers elective by the people in each district every three years, and in 1860 the title of the office in all districts was made "district attorney." This arrangement still continues. The districts are eight in number. The larger counties, like Suffolk, Middlesex and Essex, form complete and independent districts, while counties like Norfolk and Plymouth, or Berkshire and Hampden, are combined into one district.

The district attorney is required to be a resident of the district for which he is elected, and upon a vacancy in the office an appointment is made thereto by the Governor, until a new district attorney is elected and qualified. A district attorney may be removed by a majority of the justices of the Supreme Judicial Court if sufficient cause is shown therefor and it appears that the public good so requires. A bond to the extent of $5,000 with two sureties, approved by the Superior Court, is required.

District attorneys have two distinct functions, civil and criminal, although it is the latter function that is the most important for their office. Their civil duties consist in authoriz-

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ing, in writing, a medical examiner to make an autopsy on the body of a person supposed to have come to his death by violence. The district attorney is also empowered to attend the inquest proceedings and examine the witnesses where death has resulted by accident on a road or street railway, or he may direct that an inquest be held in the case of death by any casualty. The district attorney in proceedings, in the name of the Commonwealth, for the recovery of fines, forfeitures or penalties where they do not inure to the benefit of the Commonwealth may move that the case be conducted under his direction; and in case a public officer who is required by law to count and pay over money to the county treasurer fails so to do for ten days after the time prescribed by law therefor, the district attorney, upon notice from the treasurer, shall proceed forthwith to recover the amount due. He is required by law to audit the fees of trial justices and of special justices for police, municipal or district courts whose salaries are not fixed. He shall also receive from the medical examiner of the district a report of each autopsy, which report shall be an attested copy of the record of the autopsy, and, if satisfied that an autopsy was necessary, shall so certify to the county commissioners or, in the county of Suffolk, to the auditor of Boston.

In the prosecution of criminal cases in which questions of law are carried to the Supreme Court, the district attorney may have the necessary copy of the brief for the Commonwealth printed, the expenses to be paid in the same manner as the other expenses in the case, that is, by the Commonwealth; and it is his duty to forward to the prison officers a criminal history of each prisoner, as shown upon the trial.

In brief, the district attorneys within their respective districts are the attorneys of the Commonwealth in the Superior Court in all cases, criminal or civil, in which the Commonwealth is a party or with which it has to do, and, in hearings in the Supreme Judicial Court in all questions of law arising in cases in which they represent or have charge, are assistants to the Attorney-General and perform such of his duties as are not required of him personally. In the proceedings of the grand jury, while theoretically the district attorney is only the agent and official adviser of the grand jury, in practice it acts upon

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his initiative and his findings; he subpœnas witnesses to appear before it and co-operates with the police department in its investigation of criminal cases. In cases of necessity the district attorney may interfere in criminal prosecutions in the lower district, municipal or police courts for the furtherance of justice, but in practice most of his activity is confined to the prosecution of the greater crimes and felonies. Recently, by a statute passed in 1911, chapter 456, courts were given a further power of apprehending deserting husbands, searching for them wherever they might find them and punishing them in the criminal court. The district attorney is also empowered to take note of criminal offences brought out in the evidence in divorce cases and may prosecute the guilty party.

In order to render the course of justice more expeditious the district attorney in certain districts is given the power to appoint assistant district attorneys, who are removable at his pleasure. The salaries of the district attorneys and their assistants are paid by the Commonwealth, and range from $1,350 for the northwestern district (Franklin and Hampshire) to $7,000 in Suffolk. The salaries for the assistant district attorneys are proportionately less (the eastern, southeastern and northern districts $2,000 each and Suffolk $3,800). The junior assistant district attorneys receive compensation ranging from $1,200 (Worcester) to $2,500 (Suffolk).

A public prosecuting attorney is found in the other New England States, but his title varies. Thus Vermont calls him prosecuting attorney; Connecticut, State's attorney; Maine, county attorney, and New Hampshire, county solicitor. The term also varies; two years being the rule in Maine, New Hampshire, Vermont and Connecticut, and in all States except Connecticut he is elected by the voters of his district. In Connecticut the Superior Court appoints him.

(*f*) *Registers of Deeds.*

The forerunner of the registry of deeds was the act of the General Court of the Massachusetts Bay Colony in 1634, authorizing a constable and four more of the chief inhabitants in each town to make a survey of the land of all inhabitants and enter the same in a book and deliver the transcript to the court,

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and directing that this record should be sufficient assurance to every free inhabitant of his lands and tenements.

In September, 1639, the General Court ordered the recording of all men's houses and lands, and the duty of recording was assigned to Stephen Winthrop. The following year it was ordered that no mortgage, sale, bargain or grant should be of force unless recorded, and in 1642 the clerk of every shire town was named to enter deeds. In 1697 the Province law stated that clerks of the inferior courts in each county were to be registers of deeds. The Province law in 1715 provided for the election by the freeholders of a register of deeds in every county for five years, and directed that a public office be kept for registering deeds.

The Province made a new law in 1720, providing for the election of a register of deeds in each county "every" five years, who should keep an office open daily for the books, records, files and papers belonging thereto.

For the purpose of recording these deeds, mortgages, leases, etc., the Commonwealth now divides each county into districts, the number of which varies according to the area of the county and the accessibility of the places where the deeds are recorded. Thus the counties of Berkshire and Bristol are divided into three districts, the counties of Essex and Worcester are divided into two districts, and in the other counties it is provided that the register of deeds shall be established in the "shire" town thereof. The county of Suffolk, composed of the city of Boston, the cities of Chelsea and Revere and the town of Winthrop, maintains a register of deeds for the county in its "shire" city, Boston.

Registers of deeds are elected for terms of five years at the annual State election. Where a county is divided into two or more districts, there is a register of deeds for each. They must be residents of the district for which they are elected and may be removed by the county commissioners or, in Suffolk County, by the Superior Court, for misconduct in their official duties or if suffering from bodily or mental infirmity.

Upon a vacancy in the office in all counties except Suffolk and Nantucket, the county commissioners may appoint a person to fill such office until a new register is elected and qualified. In Suffolk County the vacancy is filled by appointment by the

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Superior Court justices, and in Nantucket the selectmen make a temporary appointment until a new register has been elected at a specially called meeting of the voters.

The register is required to give bond with such sureties and in such sum as the county commissioners or, in the county of Suffolk, the board of aldermen (now the City Council), approve, and he is sworn before the county commissioners or, in the county of Suffolk, before the City Council, for the faithful performance of his duties.

Registers may appoint, subject to the approval of the Superior Court, assistant registers of deeds, and they may be removed at the pleasure of the register, and for their official acts he is responsible.

The duties of the register of deeds are to receive for registration deeds, mortgages, leases, and all other papers affecting realty in his district, such as assignments and discharges of mortgages, liens, etc. After the receipt of papers for record he is especially charged with the duty of arranging them in alphabetical order and of having proper copies of them made with duplicate indices, and he is required to submit, before the first day of January, to the county commissioners an estimate of the cost for the ensuing year for indexing the records. In the county of Suffolk the indexing of the records is under the charge of a board of three index commissioners, appointed by the Superior Court, and serving without pay.

The records are to be open to the public and are not to be removed from the office of the register, and when not in use are kept in a fireproof vault, safe or room. The register must have copies made of the same whenever the books are worn, mutilated or have become illegible. The register of deeds also acts as the assistant recorder for the registration of titles, and as such is sworn before the judge of the Land Court, and gives a bond for the faithful performance of his duties.

The salaries of the registers of deeds are fixed by statute (chapter 452, Acts of 1904), when the amount of compensation was graded according to the average yearly receipts of the registry for five years preceding 1903. The salaries range from $600 in Nantucket, based upon yearly receipts of less than $1,500, to $5,000 in Suffolk and Southern Middlesex, based

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upon yearly receipts of $3,000 or more. Assistant registers receive one-half the salaries of the registers. It is also provided that the salaries of these registers and their assistants shall be readjusted in January, 1916, and every five years thereafter upon the basis of the average yearly receipts of the respective registries for the five preceding years.

In addition to his salary as register of deeds each register receives a salary, fixed by the Governor and Council, for acting as assistant recorder of titles passing through the Land Court.[1] Thus at the present time (1916–1917) the register of deeds of Suffolk County, as such assistant recorder, receives $2,554.86 a year in addition to $5,000 a year from the county of Suffolk.

The register of deeds as a county officer exists also in Maine and New Hampshire, where the register is elected for a term of four and two years respectively. The New Hampshire system is modelled on that of Massachusetts, where a register for each district into which the county is divided is found. In Maine, however, if there are two districts in a county, the register of the shire town appoints a clerk to act as register in the other district. In the other New England States the work is performed by the towns.

(*g*) *Registers of Probate.*

Originally wills, administrations and inventories were proved before the Governor and Court of Assistants in the Massachusetts Bay Colony, and before the Governor and Council in Plymouth Colony. By order of the General Court on September 9, 1639, wills, administrations and inventories were brought to a recorder at Boston (Stephen Winthrop), there to be recorded.

In 1652 "Recorders, or clerks of County Courts," were named to record wills; and in 1657 the fees for recording were established. In 1685 the county courts were authorized to hear and determine all cases relating to wills and administrations. By the charter of William and Mary the Governor and Council were authorized to probate wills and grant letters of administration, and under the powers of this charter the Governor and Council appointed in 1692 judges and registers of probate, and the General Court enacted that wills were to be proved before

[1] Twenty-five dollars a month and one-third of the entry receipts.

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"Judges of Probate," and "Registers of Probate for each county" were to record them. This arrangement continued during the entire time of the Province.

The duties of proving wills and of recording them, — the one performed by a member of the county court as "Judge of Probate," and the other entered as a county record by a "Register of Wills," who was the County Clerk under the provincial government, — were given to a new "Court of Probate" established in each county in 1784. The court in each county had a judge of probate and a register of wills appointed by the Governor. In 1856 a court of insolvency and a register of insolvency in Suffolk County were authorized, but in 1858 the offices of judge and register of probate and insolvency were established in each county, the register to be elected every five years, the judge to be appointed by the Governor.

The registers of probate and insolvency are chosen by the voters in each county, and hold office for the term of five years, beginning with the first Wednesday in January in the year succeeding their election. Residence in the district is not required. Vacancies are filled by the Governor, with the advice and consent of the Council, the appointee holding office until the election of a new register.

Since 1898, when the Federal Bankruptcy Act was passed, jurisdiction over insolvency proceedings has been taken away from the States, and the register of probate and insolvency has lost all connection with that subject.

Registers of probate, as well as assistant registers, are paid by the Commonwealth, but clerical assistants in their offices are paid by their respective counties, upon the sworn certificate of the register that the work has been actually performed and the amount specified is correct. It is specially provided in the case of the county of Suffolk that the expenses of recording probate proceedings not exceeding a fixed sum in any one year shall be paid by the county of Suffolk, upon the official certificate of the register, countersigned by the judge of the Probate Court for said county.

Registers of Probate in the counties of Maine and New Hampshire are elected by the voters thereof. In Maine the term is four years, in New Hampshire two years, and they may

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be removed by the judge in Maine and by the Supreme Court in New Hampshire. In both these States as well as in Massachusetts, the office is purely administrative. It is the duty of the register to act as the clerical assistant to the judge of probate when holding court and as an executive officer for the transacting of business and the receiving and recording of papers.

The salaries of the registers of probate in Massachusetts vary from $1,000 in Nantucket and Dukes to $5,000 in Suffolk and Middlesex.

While the registers of the Probate Court are elected, the judges of the Probate Court for each county in Massachusetts and New Hampshire are appointed by the Governor and Council. (See Amendment to Constitution of Massachusetts, Article XIX.) In Vermont and Connecticut, however, the probate judges are elected biennially.

Appointive Officers.

(*a*) *Justices of County Courts.*

The only courts which can now really be called county courts are the municipal, district and police courts. Although these titles may seem to take the courts outside a study of county affairs, nevertheless they may be truly regarded as county offices, as their total expenditures are supported by each individual county. The other courts in the judicial system of the Commonwealth — the Superior and Supreme Courts — have jurisdiction over the entire State and not in one particular county, and the salaries of the judges are paid by the State; but in the case of the Superior Court all the other expenses, both for salaries of clerks and attendants, as well as maintenance, are paid by the individual counties in which the court has regular sittings. Suffolk County, in addition (and this is peculiar to Suffolk County alone), maintains an office for the Supreme Court for Suffolk County and pays the major part of the salary maintenance for clerk and clerical assistants and all of the expenses for supplies. The Probate Court also has jurisdiction in separate counties, but a large part of the expense is borne by the Commonwealth and not by the counties.

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The justices of all the courts throughout the Commonwealth are appointed by the Governor, subject to the approval of the Governor's Council, and hold office during good behavior. In practice their term is for life, but they may be removed for misfeasance. Judges appointed to the police, district or municipal courts are supported by the county in which the court is situated and their jurisdiction is coterminous with the geographical limits of their courts. Salaries of municipal, police and district judges vary, although classified on the basis of district population. In Suffolk salaries of justices in three typical courts are as follows: —

Municipal Court of the City of Boston,	$6,500[1]
Roxbury District Court,	4,000
Police Court of Chelsea,	2,500

Judges of Superior or Supreme Courts in Maine and New Hampshire are appointed by the Governor and Council, in Rhode Island and Connecticut by the Legislature, and in Vermont they are elected for two years.

(*b*) *Clerks of District and Municipal Courts.*

While clerks of the higher courts are elective officials, the Governor, with the approval of the Council, still retains the power of appointing the clerks of the inferior courts. The appointments are for terms of five years. The clerks of these inferior courts have power to appoint their subordinates, but such appointments are subject to the approval of the justice or justices of the courts.

(*c*) *Medical Examiners.*

Medical examiners (formerly called coroners, an office abolished in 1877) are appointed by the Governor, with the approval of the Governor's Council, for a term of seven years. They, as well as the associate medical examiners, are required to be men of medical learning. Their number is prescribed for each county, which for this purpose is divided into districts. The duties of medical examiners relate chiefly to cases of death supposed to be due to violence. Their compensation is in the form of small fees, except in the county of Suffolk, where the

[1] Chief Justice; $6,000 for justices.

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salaries of the medical and associate medical examiners are fixed. In addition to the fees received for each autopsy and the compensation for actual travel, each medical examiner receives from the State 20 cents for the first twenty and 10 cents for every other notification of death returned by him to the Commonwealth.

In Maine, New Hampshire and Connecticut, the coroner is a county officer, but in other States he is a town or city officer, although frequently appointed by the State. The term of office is also variable. Thus Massachusetts has a term of seven years, Maine during good behavior and New Hampshire for five years. In Maine and New Hampshire one or more appointments are made for each county by the Governor and Council. In Connecticut one coroner is appointed for each county by the Superior Court, though he in turn may appoint medical examiners for each town.

The Massachusetts system of appointing a person qualified by education and profession as medical examiner, and the division of the duties on autopsies and sudden deaths by violence between the medical examiners and the public prosecuting attorneys has been endorsed by students of county government as the only means of obtaining effective administration of the medical examiners' office. Except in New England and the South most States elect the coroner or medical examiner for two or four years and without specifying the qualifications which appointees to this office should have. It is generally conceded that where the office is elective, the coroner's work has been inefficient and ineffective.

(*d*) *County Auditors (Controller of County Accounts).*

The county auditor, as a county official, exists in New Hampshire, Vermont and Connecticut, but no such office is found in Massachusetts,[1] outside of the office of Controller of County Accounts (established in 188)7, whose jurisdiction extends over the entire State, embracing within its authority all the counties, their offices and accounts.

Prior to the appointment of a Controller of County Accounts,

[1] In Boston the City Auditor acts as county auditor (for which he receives $800 a year) in approving bills against the county, but the Controller of County Accounts has jurisdiction over all county of Suffolk offices, except the county treasurer's office.

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various boards of examiners audited county accounts. Thus in 1821 it had been enacted that the Judge of Probate, the Judge of the Municipal Court of the city of Boston, and the Justices of the Police Court should be the board of accounts to examine and allow all bills of costs, accounts and charges arising out of proceedings in the municipal and police courts, the maintenance of the jails, etc. In each of the other counties by act of 1835, a board of examiners, consisting of the judge of probate, the register of probate, and the clerk of the Court of Common Pleas was authorized.

In 1879 the commissioners of savings banks were made commissioners of county accounts to examine the accounts of the different county officers, superseding the old board of examiners in this respect in all counties except Suffolk, and the board of accounts in Suffolk.

In 1887, however, a new office was created for this work, the office of Controller of County Accounts, which is filled by appointment by the Governor for a term of three years. There are auditors, however, appointed by the courts in the trial of civil actions, whose per diem compensation is paid by the county in which the case occurs, if they are appointed by the Supreme Judicial Court, Superior Court or Probate Court; but if they are appointed in any other court the parties to the action pay for their services.

These auditors appointed by the courts, however, do not correspond to the county auditors appointed in the three States mentioned above. The office analogous to them in Massachusetts is that of the Controller of County Accounts, who has supervisory power over all the financial accounts of a county office. It is his duty to examine the accounts of county treasurers, except in Suffolk County, at least once a year, and also, at least once a year, to visit without previous notice all other county officers who receive money paid by them to the county treasurer, viz., clerks of the Supreme Judicial Court and the Superior Court of Suffolk County, the recorders and the assistant recorders of the Land Court, registers of probate and of deeds, clerks of the police and district courts and truant schools, and to make an examination of all their accounts and vouchers. If the accounts are incorrect, the Controller gives notice in

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writing to the county commissioners and to the Attorney-General, and makes a full statement thereof in his annual report. He examines at least once a year the bonds of public officers, except the county treasurer and officers in the county of Suffolk.

The salary paid to the Controller is $2,500 a year, and he has the power to appoint deputies, whose salaries range from $1,200 to $1,800, all payable by the Commonwealth, and in addition is allowed actual traveling expenses for himself and his deputies.

The exercise of supervision over county accounts in other New England States is diverse. Thus New Hampshire county auditors (two to each county) represent the two leading political parties and are appointed by the Supreme Court. In Connecticut the county convention (a body composed of those members of both houses of the State Legislature elected from any given county) appoints biennially two county auditors from the two leading political parties; while in Vermont the two commissioner judges appoint an auditor for each county every two years. In New Jersey in counties of the first class, a "county supervisor" is provided for, who has powers analogous to those usually conferred upon the mayor of a city not of the commission government type. He keeps the board of "chosen freeholders" informed as to the state of the county finances, attends to the enforcement of the laws, supervises the subordinate officers and holds the veto power.

IV. HOUSES OF CORRECTION AND JAILS.

The power which the sheriff had enjoyed since early colonial times (as beadle or marshal until 1687 and since then as sheriff) of being keeper of the county jails and houses of correction was reduced by the Legislature in 1857, by the enactment of a statute creating a "board of directors for public institutions" for the city of Boston and the county of Suffolk, to which was given authority over, among other places, the House of Correction, but leaving the county jail still under authority of the sheriff of the county. Then in 1859 it was enacted that, except in Suffolk, the county jail and the house of correction in each county should be considered one and the

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same institution, and the sheriff of the county should be in charge of it.

In all counties of the Commonwealth, with the exception of Dukes and Suffolk, the County Commissioners are required to provide a house or houses of correction for the safe keeping of offenders legally committed thereto by the courts of the Commonwealth or the United States. (See Revised Laws, chapter 20, section 5, and chapter 224, section 8.)

The houses of correction are in charge of a master or keeper, appointed by the sheriff of the county, except in the case of Suffolk County, where the city penal institutions commissioner appoints the master. The master or keeper of the jail and the house of correction has the power to appoint and is responsible for his subordinate officers. The compensation for these officers, assistants and employees is fixed by the county commissioners; but any sheriff, master or keeper of jails who considers his salary inadequate may present a petition to the Superior Court, which, after notice to the chairman of the county commissioners of a hearing, shall fix the salary. Houses of correction are subject to the supervision of the county commissioners, who are charged with the duty of visiting them and examining them annually.

Supplies for the jails are, with the exception of the county of Suffolk, furnished and bought by the county commissioners, who may order at their discretion special rations when they deem it necessary, and the master or keeper of the house of correction is directed under penalties to supply these special articles of food.

Each county is also commanded to provide jails, which differ from houses of correction in that persons charged with crime and committed for trial, witnesses on trial for criminal cause, criminals awaiting transfer to permanent penal institutions, and persons detained or committed by the courts of the United States, or poor debtors arrested on civil process are kept therein. Houses of correction, on the other hand, are exclusively for the imprisonment of persons after they have been convicted of offences against the law.

The sheriffs of the counties are in direct control of the jails, and as such receive salaries in addition to their salaries as sher-

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iffs. They may appoint their subordinates in the administration of the jail, and the salaries of these subordinates are fixed by the county commissioners. The sheriff is authorized to receive from the county as compensation not less than $20 a year for the safe keeping of persons committed to his custody, and in the county of Suffolk such sums as the Mayor and Aldermen (City Council) may determine.

V. REFORM SCHOOLS.

The county commissioners are also directed in their discretion and at the expense of the county to establish houses of reformation for juvenile offenders under sixteen years of age, for offences which are punishable by imprisonment or for the non-payment of fines. The county commissioners are in control of these houses of reformation, and may make rules and regulations for the appointment of teachers, officers, etc., and have the power to discharge and release all persons who are sentenced there. In the county of Suffolk the duty of maintaining a reform school was assigned by special act to a city department called the Children's Institutions Department, which maintained a Parental School in West Roxbury for truants. This school was abolished in 1914. The city of Boston, through the Children's Institutions Department, still maintains on one of the islands in the harbor (Rainsford Island) the Suffolk School for Boys, to which juvenile offenders are sentenced.

The other counties of the State, with the exception of Barnstable, Berkshire, Dukes and Nantucket, are commanded to maintain either separately or jointly a truant school for instruction and training of juveniles committed as habitual truants, absentees or school offenders. If two or more counties join for the establishment of a joint school, the control of it is vested in the chairmen of the county commissioners of such counties, who receive for this work salaries of $100 a year from each of the counties so joined.

In the counties of Barnstable, Berkshire, Dukes and Nantucket it is specially provided that they shall establish a truant school as a place for the instruction and training of children committed in their respective counties as habitual truants, and

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shall pay for their support in said school such sums as the county commissioners having control thereof may determine.

Truant schools of the counties are subject to visits by the Board of Education and by the State Board of Charity. These boards are charged with the duty of reporting annually to the General Court regarding the condition of these schools.

VI. THE FEE AND CIVIL SERVICE SYSTEMS IN COUNTY GOVERNMENT.

1. Fee System.

Massachusetts may be regarded as very advanced and as very backward in its treatment of the above two subjects. This may seem strange at first sight, but it is nevertheless the fact. The fee system in county government, as well as in the other branches of the administrative offices of the State, has been almost entirely abolished with the exception of the fees received by the register of deeds [1] and by the sheriff and his deputies for serving civil processes. All other fees received by county officials are turned over to the county treasurer. The sheriff's fees, according to a statement made by a deceased sheriff of Suffolk County, amounted to upwards of $26,000 a year. (See *Finance Commission Reports*, X, p. 133.) Fees in Suffolk County are pooled and are divided up among the sheriffs and their deputies. Whether the above amount is only a rough approximation it is impossible to tell, because no return is made to any public supervising authority, either in Suffolk or in any other county of the State. It is one of the surviving archaisms in the administrative department of the government of Massachusetts. It is true, however, that there are other county officers, such as trial justices and medical examiners, who are paid a stipulated fee for each sitting or autopsy; but such payment, being made by the county, is in the nature of a salary.

Attempts in Massachusetts to abolish the system of fees and to place the office of deputy sheriff upon a salary basis have been vigorously and thus far successfully combated.

The practice of allowing sheriffs to retain fees is found in many other States. New York and New Jersey give telling examples of the working of the system in these States. In the State of New York in two counties (New York and Richmond)

[1] A certain portion of entry receipts is paid to the register of deeds for acting as assistant recorder of the Land Court.

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the sheriff receives both salary and fees; in Richmond he receives $6,000 a year and all his fees; in New York, $12,000 a year and half his fees. In the period from 1906 to 1914 in New York County his share of the fees amounted to $408,324.44, and this sum was apportioned among the various sheriffs who held office during these years. One sheriff (Julius Harburger) in 1912–1913 received $98,769.24 in fees, a sum sufficient to allow him to retire to private life and to affluence. In order to cure the evil a bill was introduced into the Legislature by the present sheriff of New York County to limit his salary to $12,000 a year, but it failed of passage.

In New Jersey, however, the salary plan for the county clerk, register, sheriff and surrogate was tried and the fee system abolished, but instead of a revenue being turned over to the county (Hudson) a deficit resulted on account of the excessive patronage in the number of new positions created.

The system of fees to public officials, either in lieu of salary or in addition to salary, is gradually being abolished in all counties of the country; but one will find in certain offices, especially the sheriff's, that the fee system still exists. Thus in New Hampshire the register of deeds and the medical examiners are still paid by fees; in Vermont the register of probate receives fees in addition to salary, the registers of deeds are paid by fees, and in Connecticut the judge and the clerk of probate, as well as register of deeds, coroners and medical examiners, are paid by fees.

2. Civil Service.

The introduction of the civil service idea or merit system in county appointments has also been fought as hard as the abolition of the fee system; but notwithstanding the alignment of the tremendous forces of the county "ring" against it, the merit system is spreading. When the Commonwealth of Massachusetts in 1883 adopted the principle of civil service examination and appointment for city, town and State employees, the influence of the county officeholders was strong enough to have county positions excluded. No valid reason existed then or can be advanced now for the exclusion of the county employee from the benefits of civil service protection, or for the exclusion of the general public from opportunities for county

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employment, but the measure was passed with the elimination of the county employee. Recently attempts have been made to cure this defect in the civil service law, but with one exception they have been failures. In 1915 (Special Acts, chapter 116) an act was passed placing under the jurisdiction of the civil service commission the house of correction in Suffolk County, but the reform ended there. That such a state of affairs is not just, either to the appointing power or to the public, is forcibly pointed out in a report issued by the justices of the Municipal Court of the City of Boston in 1915, as follows: —

> The working force of the court has so increased with the increase in its business as to suggest consideration of change of methods of appointment. The solicitations of candidates and their friends absorb too much time, and the appearance of being a large dispenser of patronage is not a good thing for any court. There seems no reason why all future vacancies in the ordinary clerical service and in court officers' positions might not be adequately filled through civil service methods.

Notwithstanding this opinion of the justices of a court of large influence, the extension of civil service to the counties has not taken place.

Many States outside New England have taken up the question of the extension of the merit system to counties, and in many cases through referendum vote the people have adopted it. In other States it has become effective through statutory enactment. Civil service laws are in operation in seventeen counties in New York, in one county in Colorado, in one county in California and in Illinois, and in five counties in New Jersey. In 1913 a bill was passed by the Ohio Legislature covering not only city and State positions, but also county appointments. (See Article XV, section 10.)

This is the extent to which civil service has been carried in county offices in the United States.

VII. MANDATORY LEGISLATION AFFECTING COUNTIES IN MASSACHUSETTS.

A survey of the laws which have been passed by the General Court in the last seventy-five years shows the enormous number of legislative mandates for county action and the meager amount of independent action in adminstrative matters left to

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county officials. If these bills were analyzed, one would be astonished at the large number of acts yearly passed increasing the compensation of individual clerks and employees of the counties. Year after year the records of the General Court are filled with acts relating to counties, imposing upon them special financial burdens in the form of increased salaries for county officeholders.

A tabulation was made of the years 1840 to 1892, and out of 425 mandatory acts passed relating to counties, 118 applied exclusively to the establishment of salaries, or to an increase in them. These are burdens put upon counties without the consent of the counties themselves, and without any attempt to follow the wishes or to learn the desires of the county freeholders. That legislative committees cannot in the nature of things be as correctly informed or have knowledge of the actual merits of each salary increase is obvious, and the ever-increasing complexity and multitude of county positions only serve to add greater weakness to any control or proper audit by such a committee. It is conceded that many of these purely organization features could better be dealt with by the local county authorities in the light of local needs and with the added advantage of first-hand information and observation. Counties in general have suffered much from the creation of needless statutory positions. It is the greatest inconsistency on the part of the States that they have given to cities and towns a great measure of freedom and home rule in their administrative functions, but have denied even a reasonable amount of home rule to counties. States are beginning to recognize this inconsistency and are allowing to counties more autonomy. Thus the legislators of California in 1911 recognized that there were a number of subjects which the local electorate and the local authorities in the fifty-odd counties could pass upon more intelligently than legislators resident in a section of the State perhaps seven hundred miles away. Accordingly there was submitted to the people a proposition for limited constitutional home rule for counties, which made it possible for the local constituency to decide upon the structure or form of their own government and to control the county officers as they saw fit. The amendment was adopted in October, 1911. It provides that upon the petition of fifteen per cent of the electors, or on the initiative of

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the board of supervisors, an election of a board of fifteen freeholders is held. The freeholders draft the charter, after which it is submitted to the people for ratification or rejection. If ratified it is then presented to the Legislature for confirmation or rejection. The charter framers of Los Angeles County were quick to take advantage of this amendment, and in 1912 a new charter for that county was adopted, ratified and confirmed. Under that charter only three officers were left elective, — sheriff, district attorney and assessor, — and the rest were taken out of the elective list because it was considered that their duties were chiefly or entirely ministerial or clerical. Furthermore, the board of supervisors control, through their power of appointment and removal, the principal county officials.

Another plan in California is found in Alameda County, where there was a local division of sentiment between the rural and urban population as to consolidation or annexation. In order to get rid, however, of their duplicate officers and conflict of authority, a system of federation was devised whereby the county board as a separate and distinct body was abolished and was recomposed of mayors and, in case of the largest cities, of additional designated members of the City Councils and of representatives from towns and from the three districts into which the rural part of the county was divided.

San Bernardino County in California, as well as Denver, Colorado, have adopted forms of government which give more local autonomy to these counties, and Maryland in 1914 passed a constitutional amendment permitting home rule in the city and county of Baltimore.

NOTE. — In addition to the tables printed in the Appendix, synoptical tables exhibiting the framework of county government in several typical States were prepared. These are too voluminous for publication and are deposited in the State Library of Massachusetts.

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APPENDIX.

STATISTICAL TABLES AND SYNOPSES.

Total County Expenditures for Eighteen Years (Suffolk County included).

[For detail see yearly reports, Controller of County Accounts. Figures obtained by deducting "Balance in Treasury" from "Total" in Controller's Table of Expenditure.]

COUNTIES.	COUNTY CONTROLLER'S REPORT OF[1] —								
	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.
Barnstable, . .	$49,261 64	$63,665 31	$39,403 45	$47,037 14	$39,491 04	$40,672 70	$55,955 27	$85,658 22	$56,820 97
Berkshire, . .	184,293 30	170,282 54	162,114 81	181,342 11	222,764 95	187,566 15	182,619 82	153,632 27	176,497 28
Bristol, . . .	798,104 24	582,041 05	556,722 02	561,561 65	637,752 25	644,219 97	610,511 36	618,194 15	1,712,695 35
Dukes, . . .	23,085 06	13,239 43	14,123 72	15,745 33	13,881 98	17,454 17	13,179 28	11,621 93	13,492 69
Essex, . . .	434,289 05	410,985 07	503,873 11	789,793 65	975,726 70	920,298 99	903,592 75	891,600 88	1,653,822 51
Franklin, . .	109,725 25	80,246 61	118,000 30	78,317 45	89,707 36	84,654 39	97,325 99	89,899 81	87,031 84
Hampden, . .	291,084 96	292,040 95	317,857 94	341,561 04	283,942 81	296,263 76	742,032 86	473,811 79	502,842 80
Hampshire, . .	97,435 92	72,940 85	75,417 62	80,718 50	92,086 80	129,550 27	105,106 52	62,302 49	66,548 21
Middlesex, . .	976,035 85	1,117,463 10	1,131,156 49	1,068,194 78	1,154,651 09	1,099,049 70	1,161,233 35	1,197,640 55	1,139,276 15
Nantucket, . .	5,553 45	5,842 96	5,977 33	5,103 68	4,673 63	3,608 43	5,514 66	4,676 85	4,052 57
Norfolk, . . .	367,452 46	343,418 27	253,107 74	263,424 12	356,523 98	468,519 96	468,200 20	453,065 96	326,494 75
Plymouth, . .	177,505 76	167,678 60	150,482 12	180,690 68	200,574 40	258,305 48	283,356 36	243,285 86	252,699 86
Worcester, . .	499,230 37	530,126 42	493,376 48	471,314 29	514,746 66	485,364 12	485,845 53	474,375 06	493,321 10
Suffolk,[2] . .	1,284,496 76	1,286,450 67	1,470,276 08	1,700,850 15	1,501,586 44	1,451,986 08	1,377,704 33	1,395,900 07	1,500,090 41
Totals, . .	$5,297,554 07	$5,136,421 83	$5,291,889 11	$5,785,154 57	$6,088,110 09	$6,087,514 18	$6,492,148 28	$6,155,655 89	$7,985,686 49

[1] The County Controller's Report in each instance covers the year preceding that indicated in the title.

[2] From *Report of City Auditor for Financial Year 1916–17.*

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Total County Expenditures for Eighteen Years (Suffolk County included) — Concluded.

Counties.	County Controller's Report of —								
	1909.	1910.	1911.	1912.	1913.	1914.	1915.	1916.	1917.
Barnstable,	$110,538 43	$63,810 22	$65,709 69	$72,761 77	$66,817 77	$87,456 06	$105,484 47	$93,361 97	$111,906 60
Berkshire,	208,465 12	224,679 46	220,256 20	218,096 36	226,696 24	214,391 15	235,985 61	273,450 98	264,848 81
Bristol,	1,102,908 79	839,585 07	946,118 50	1,235,195 45	730,036 73	790,186 77	868,195 00	824,262 70	901,354 92
Dukes,	14,335 33	12,901 23	13,556 69	11,672 06	11,690 16	11,655 36	25,632 80	18,219 17	16,658 30
Essex,	1,562,577 19	1,502,843 37	1,406,640 02	1,335,954 81	1,232,740 35	1,779,549 86	1,617,766 50	1,680,253 88	1,779,532 98
Franklin,	94,611 70	94,182 78	92,568 57	93,596 52	102,852 01	108,556 81	113,888 15	150,828 89	130,974 26
Hampden,	514,513 73	324,838 21	615,991 08	625,908 28	383,601 64	379,374 14	394,195 07	449,733 10	551,415 95
Hampshire,	81,925 01	84,149 68	73,781 58	78,284 25	82,855 36	105,415 12	185,026 12	207,069 25	223,610 22
Middlesex,	1,236,836 62	1,330,789 61	1,247,736 51	1,191,971 54	1,216,834 46	1,395,238 60	1,522,816 24	1,578,815 59	1,587,205 92
Nantucket,	5,193 20	5,759 44	4,684 35	4,890 43	4,864 75	4,865 81	5,364 02	6,361 52	4,739 92
Norfolk,	343,201 35	379,653 33	408,916 74	472,011 38	543,246 48	553,527 44	484,819 26	495,898 07	683,514 33
Plymouth,	316,785 37	291,426 14	321,170 81	322,528 69	364,689 77	463,733 23	349,706 81	382,457 92	392,270 20
Worcester,	499,173 45	492,271 19	505,614 27	543,242 99	569,416 67	551,089 82	624,997 75	688,203 06	650,072 49
Suffolk,	1,505,615 76	1,603,152 00	1,537,506 98	1,636,168 09	1,706,653 40	1,733,420 82	1,819,717 19	1,883,079 05	1,908,497 99
Totals,	$7,596,681 05	$7,250,041 73	$7,460,251 99	$7,842,282 62	$7,242,995 79	$8,178,460 99	$8,353,594 98	$8,731,995 15	$9,206,602 89

Remarks. — The expenditures are made up of: interest; debts and loans; salaries fixed by law, county officers; clerical assistance in county offices; salaries and expenses, district and police courts; care and support of prisoners in jails, houses of correction, including salaries; criminal costs in superior courts; civil expenses in superior and supreme courts; trial justices; traveling expenses, county and assistant commissioners; medical examiners and inquests, insane; auditors, masters and referees; building, county buildings; repairing, furnishing, etc., county buildings; care, fuel, lights, supplies, etc., in county buildings; highways, bridges and land damages; law libraries; training schools; agricultural schools; State reservations; pensions; dog damages and dog money refunded; miscellaneous.

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Salaries of County Officials, 1916.

	Suffolk.			Middlesex.	Essex.
	Supreme.	Superior.			
		Civil.	Criminal.		
Clerk of Courts,	–	–	–	$6,000	$5,200
Clerk,	$6,500	$6,000	$6,000	–	–
Assistant Clerk,	3,500	5,000	3,000	3,500	2,600
Second Assistant,	–	(2) 3,000	3,000	2,500	2,000
Third Assistant,	–	(9) 2,800	–	2,500	2,000
Fourth Assistant,	–	–	–	2,000	–
Clerical Assistance to Clerks of Courts,	19,785	56,990	61,919	11,246	6,967
Treasurer,		800		3,500	3,000
Sheriff,		3,000		3,000	3,000
County Commissioners (each),		–		2,000	2,000
Court Stenographers (each),		(12) 2,500		2,500 2,400 1,500	2,500 2,500 –
Register of Deeds,		5,000		–	–
Northern,		–		2,300	2,275
Southern,		–		5,000	4,900
Middle,		–		–	–
Assistant Register of Deeds,		3,000 2,400		–	–
Northern,		–		–	1,127
Southern,		–		2,500	2,450
Middle,		–		–	–
Clerical Assistance to Register of Deeds,		52,420		–	–
Northern,		–		15,373	8,868
Southern,		–		70,163	19,219
Middle,		–		–	–
Register of Probate,		5,000		5,000	3,500
Assistant Register of Probate,		3,000		3,000	2,300
Second Assistant Register,		3,000		2,500	1,800
Third Assistant Register,		–		2,000	–
Clerical Assistance to Register of Probate,		8,426[1] 27,789[2]		9,605[1] 5,030[2]	7,280[1] 667[2]
Judge of Probate,		7,000 7,000		6,000 6,000	4,000 4,000

[1] Paid by State. [2] Paid by County.

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Salaries of County Officials, 1916 — Continued.

	Worcester.	Bristol.	Hampden.	Plymouth.	Norfolk.
Clerk of Courts,	$5,200	$5,200	$4,000	$3,500	$3,500
Clerk,	–	–	–	–	–
Assistant Clerk,	2,500	2,800	2,400	1,500	2,500
Second Assistant,	2,000	–	–	–	–
Third Assistant,	2,000	–	–	–	–
Fourth Assistant,	–	–	–	–	–
Clerical Assistance to Clerks of Courts,	6,814	2,575	4,292	1,600	3,089
Treasurer,	2,500	2,500	2,250	2,000	2,000
Sheriff,	2,500	3,000	2,500	1,800	2,200
County Commissioners (each),	1,800	1,800	1,500	1,200	1,400
Court Stenographers (each),	2,500	–	–	–	–
Register of Deeds,	–	–	4,100	3,500	4,300
Northern,	2,300	2,400	–	–	–
Southern,	5,000[1]	2,800	–	–	–
Middle,	–	2,500[2]	–	–	–
Assistant Register of Deeds,	–	–	2,050	2,000	–
Northern,	1,100	1,200	–	–	–
Southern,	–	1,400	–	–	–
Middle,	2,500[1]	1,250	–	–	–
Clerical Assistance to Register of Deeds,	–	–	11,185	7,113	23,701
Northern,	3,739	3,724	–	–	–
Southern,	22,547	5,221	–	–	–
Middle,	–	3,610	–	–	–
Register of Probate,	3,500	3,500	3,400	2,400	2,800
Assistant Register of Probate,	2,300	2,300	1,700	1,200	1,650
Second Assistant Register,	1,200	–	–	–	–
Third Assistant Register,	–	–	–	–	–
Clerical Assistance to Register of Probate,	6,830[3]	4,026[3]	3,149[3]	1,148[3]	3,594[3]
Judge of Probate,	4,500	4,500	4,100	2,900	5,000
	4,500	–	–	–	–

[1] Worcester District. [2] Fall River District. [3] Paid by State.

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Salaries of County Officials, 1916 — Concluded.

	Berkshire.	Hampshire.	Franklin.	Barnstable.	Nantucket.	Dukes.
Clerk of Courts,	$3,700	$2,400	$2,000	$1,600	$800	$800
Clerk,	–	–	–	–	–	–
Assistant Clerk,	–	–	–	–	–	–
Second Assistant,	–	–	–	–	–	–
Third Assistant,	–	–	–	–	–	–
Fourth Assistant,	–	–	–	–	–	–
Clerical Assistance to Clerks of Courts,	1,820	1,495	2,647[1]	685	–	880
Treasurer,	1,500	1,100	800	500	–	300
Sheriff,	2,000	1,500	1,250	1,000	300	300
County Commissioners (each),	1,000	733	1,000	1,050	–	400
Court Stenographers (each),	–	–	–	–	–	–
Register of Deeds,	–	2,200	2,100	2,300	600	600
Northern,	1,625	–	–	–	–	–
Southern,	711	–	–	–	–	–
Middle,	2,275	–	–	–	–	–
Assistant Register of Deeds,	–	–	1,050	–	–	–
Northern,	–	–	–	–	–	–
Southern,	–	–	–	–	–	–
Middle,	–	–	–	–	–	–
Clerical Assistance to Register of Deeds,	–	2,305	–	–	–	–
Northern,	648	–	–	–	–	–
Southern,	644	–	–	–	–	–
Middle,	1,620	–	–	–	–	–
Register of Probate,	1,900	1,600	1,600	1,600	1,000	1,000
Assistant Register of Probate,	1,200	800	800	800	–	–
Second Assistant Register,	–	–	–	–	–	–
Third Assistant Register,	–	–	–	–	–	–
Clerical Assistance to Register of Probate,	900[2]	600[3] / 150[2]	330[3]	526[3]	18[3]	292[3]
Judge of Probate,	2,500 / –	1,800 / –	1,800 / –	1,800 / –	1,200 / –	1,200 / –

[1] Clerical for *County* Offices. [2] Paid by State. [3] Paid by County.

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Salaries of District Attorneys.

	Suffolk.	Northern.	Eastern.	Southeastern.	Southern.	Middle.	Western.	North-western.
District Attorney, . . .	$7,000	$4,000	$3,000	$3,000	$2,400	$2,400	$2,400	$1,350
Assistants, ...	(3) 3,800	2,000	2,000	2,000	1,600	1,600	–	–
Assistants, ...	(2) 2,500	(2) 1,800	–	1,200	–	–	–	–

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BULLETIN No. 9

BIENNIAL ELECTIONS AND LEGISLATIVE SESSIONS

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BIENNIAL ELECTIONS AND LEGISLATIVE SESSIONS.

I. Biennial Elections.

In all the American constitutions, both State and Federal, it is provided that elections shall be held at stated intervals and elected officers shall be chosen for fixed and definite terms. In this respect the government of the United States differs from that of Great Britain and the British Dominions, where the tenure of the ministry depends upon the retention of the confidence of Parliament which itself is chosen at irregular intervals. Some of the constitutions adopted early in the Revolution emphasize the importance of regular elections as a means of protecting the people against oppression. Pennsylvania in her Constitution of 1776 said:

> That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

The next year this section of the Constitution of Pennsylvania was adopted verbatim by the people of Vermont. The same principle was stated in the Massachusetts Constitution of 1780 in these words:

> In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

While the instruments of government adopted in 1776 and the years following by Pennsylvania, Vermont and Massa-

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chusetts lay stress upon the holding of elections at regular intervals, they say nothing as to the length of the interval. But in the Bill of Rights adopted by Virginia in 1776, it was said that elections should be "frequent, certain, and regular," while Maryland said that they should be "free and frequent" and North Carolina declared that "elections ought to be often held."

In these statements of principle no attempt is made to define the term "frequent." In practice, however, all of the original thirteen States except South Carolina followed the colonial habit of annual elections, and this rule was also adopted by Vermont upon its admission to the Union in 1791, and by Kentucky in 1793. But when Tennessee became a State in 1796, it followed the example of South Carolina and adopted biennial elections. The tendency in the older States to continue the practice of colonial days was doubtless strengthened by John Adams' much quoted letter of 1776 in which he said:

> That the representatives may often mix with their constituents and frequently render them an account of their stewardship, elections ought to be frequent. . . . These elections may be septennial or triennial; but, for my own part, I think they ought to be annual; for there is not in all science a maxim more infallible than this, where annual elections end, there slavery begins.[1]

It is interesting to note that when he wrote this letter, John Adams apparently did not think of biennial elections as a possibility. If elections were not annual they must be either triennial or septennial. The letter is also a good example of the exaggerated rhetoric of Revolutionary days. Whether the forty-five States which have abandoned annual elections have done wisely or not, they are obviously not in a condition of slavery.

About 1830 the States which had annual elections began to shift. Of the original thirteen, where it might be assumed that the annual system was more firmly rooted than in the newer States, Delaware abandoned annuals in 1831, North Carolina in 1835, Georgia in 1840, Virginia in 1850, Pennsylvania in 1873, New Hampshire in 1877, Maine in 1880, Con-

[1] *Works of John Adams*, IV, 205.

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necticut in 1884, and Rhode Island in 1911. To this list should be added Vermont, which adopted biennial elections in 1870.

The States which have adopted a longer term than one year for membership in the lower house have invariably adopted a two-year term except Louisiana (1879), Mississippi (1890), and Alabama (1901), all of which choose the members of both branches for terms of four years. Texas in 1868 provided for a term of six years for the members of the Senate, but in 1876 this was reduced to four years.

Ex-Governor Noel of Mississippi, whose public career extends over more than a generation, makes the following comment in a letter to the writer upon the change from biennial to quadrennial elections in Mississippi in 1890:

> When the proposition to change State and county officers' terms to four years was first agitated in 1882, the proposition was defeated in the Senate on the idea that equal terms for Representatives and Senators was violative of the spirit and purposes of our constitutions, State and National. The proposition then started gained such force that the Constitution of 1890 made all State and county officers, including State Senators and Representatives, elected quadrennially.
>
> No harm whatever has resulted from the change. I have never heard a complaint since the change was made. At first the second session of the Legislature was restricted to revenue and appropriation bills and such other matters as the Governor might by special message submit. By constitutional amendment this restriction was abolished to the general satisfaction of the people.
>
> Annual sessions of the Legislature were had in Mississippi soon after the Civil War, I think. According to my experience and observation, quadrennial elections for all State and county offices is a decided advantage over annual or biennial elections. Besides the constant turmoil from frequent elections, and the loss of popular interest, it keeps the officers constantly canvassing and tends to distract attention from official duties.

The following table indicates the terms for which the members of the two houses are chosen in the several States:

Senate for four years, . . .	31 States.
Senate for three years, . . .	1 (New Jersey).
Senate for two years, . . .	15 States.
Senate for one year, . . .	1 (Massachusetts).
House for four years, . . .	3 (Alabama, Louisiana, Mississippi).
House for two years, . . .	42 States.
House for one year, . . .	3 (Massachusetts, New York, New Jersey).

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Three States elect both the Senate and the House for a four-year term, — Alabama, Louisiana, and Mississippi. New Jersey has a three-year term for the Senate and a one-year term for the House. Massachusetts alone elects the Senate annually, and only Massachusetts, New York and New Jersey elect the House annually.[1]

II. The Interval between Legislative Sessions.

The interval between legislative elections has no necessary connection with the interval between sessions except, of course, that the latter cannot be longer than the former. In most discussions of the subject of biennials, however, no distinction is made between the two, although in practice the two periods have frequently differed, and the considerations which apply to one do not necessarily apply to the other. The distinction was well marked in the Declaration of Independence where George III was indicted for his failure to cause sessions of the colonial legislatures to be held at frequent intervals rather than for any failure to allow public sentiment to be expressed in new elections. In the colony of Massachusetts Bay the General Court met at first four times each year. This proved so inconvenient that the number of sessions was reduced to two each year, and this continued until 1831, when the present system of annual sessions was established. In Connecticut as many as seven sessions were held in a single year, but here, as in Massachusetts, the practice came to be two regular sessions each year, and this continued until the adoption of the Constitution of 1818, when annual sessions were made the rule. In no State have so many legislative sessions been held in so short a space of time as in New Hampshire. In 1776 the Legislature met seven times; in 1777, six times; in 1778, five times; in 1779, four times; in 1780, 1781, and 1782, five times in each year. In a single decade beginning in 1776, the Legislature met forty-seven times. In New Jersey the Legislature held seven sessions in 1777 and five in 1778, while two sessions annually were the rule until 1843. In Pennsylvania from 1776 to 1793 the Legislature usually met three times a year, in 1794 it met twice, and from 1795 to 1883 regular annual sessions were held.

[1] For a detailed tabulation for each State, see Appendix A. Since the above statement was prepared, Massachusetts has adopted biennial elections.

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In Rhode Island sessions of the Legislature, like the publication of Elbert Hubbard's *Philistine*, occurred "every little while." Like an uneasy spirit the General Assembly wandered from town to town as though seeking an abiding-place. For instance, in January, 1821, it met at Providence. In February it shifted to East Greenwich. In May and June it held two sessions in Newport and rounded out the legislative year with a fifth session in South Kingstown. Until 1854 there were usually four sessions in each year, but the constitutional amendment of that year reduced the number to two, where it continued until another amendment adopted in 1900 reduced the number to one. It is difficult, however, to break old habits, and since 1900 four adjourned or special sessions have been held.

Without following the question in detail in all the States, it may be said that down to the close of the Revolution every State had at least two and generally more than two sessions each year. About 1790 a marked tendency shows itself to reduce the number of regular sessions to one in each year, and that practice was soon adopted in New York, Pennsylvania, Maryland, North Carolina, South Carolina and Georgia. New Hampshire clung to semi-annual sessions until 1813, Connecticut until 1818, and Rhode Island until 1900.

From this rehearsal it is apparent that there has been a steady reduction in the number of legislative sessions. From five and six or more in a year the number was first reduced to two. Then it was made one session per year. In 1796 Tennessee adopted what has come to be the rule in forty States, — that is, one regular session in two years. In 1890 Mississippi provided for one regular session in four years with an intervening "special" session midway between, which was allowed to consider only financial legislation and such measures as the Governor might lay before it. This system was abandoned in 1910 when an amendment was adopted which abolished the "special" session and substituted for it a regular session unlimited as to length or as to the subjects which it may consider. Mississippi, therefore, now has regular biennial sessions. In 1901 Alabama adopted a quadrennial session limited to fifty days. No other State has adopted a similar provision.

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In several States in the Union many persons have recently advocated that there should be a substantial reduction in the membership of the Legislature, and that the smaller body should then remain in practically continuous session. It is argued that it is impossible to draft laws which will not be in need of frequent amendment, and that whenever defects are discovered or unforeseen situations arise the law should be promptly changed. City councils are cited as examples of legislative bodies meeting at such short intervals that their sessions are practically continuous. This plan has not yet been adopted for the Legislature of any State.

The following table indicates the practice of the several States as to the interval between sessions and the limitations upon the length of sessions:

FREQUENCY OF SESSIONS.

Quadrennial,	1 (Alabama).
Biennial,	41 States.
Annual,	6 (Georgia, Massachusetts, New Jersey, New York, Rhode Island, South Carolina).

LIMITS PLACED UPON THE LENGTH OF SESSION.

None,	14 States.
40 days,	3 (Oregon, South Carolina, Wyoming).
45 days,	1 (West Virginia).
50 days,	3 (Alabama, Georgia, Kansas).
60 days,	20 States.
61 days,	1 (Indiana).
70 days,	1 (Missouri).
75 days,	1 (Tennessee).
90 days,	3 (Colorado, Maryland, Minnesota).
5 months,	1 (Connecticut).

From this tabulation it appears that the sessions of the Legislature are limited in most States to a period of from forty to ninety days, with nearly one-half set at sixty days. California is using the bifurcated session of thirty days for the introduction and discussion of bills, thirty days' recess for the

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members to discuss the bills with their constituents, and an unlimited session for the debate and passage of approved measures.[1]

III. Reasons for the Abandonment of Annual Elections or Sessions.

Few movements in American politics have been more pronounced or more steadily persistent in one direction than has been the general abandonment of annual elections and annual sessions. While in some instances local causes may have been contributory, it is obvious that so widespread a movement can only be explained by causes as widespread as the results. Among the reasons that have been given for the change are the following:

1. The second quarter of the nineteenth century — the period in which the movement made the greatest headway — was marked by the development of a general distrust of legislative bodies. Every State had its tale of corrupt grants of franchises contrary to the public interest, of extravagance in the appropriation of public money, and of a reckless use of the borrowing power. Many States are still burdened by the public debts contracted at that time. In consequence of this experience the people imposed extensive restrictions upon the authority of their legislative bodies, limited both the duration and number of their sessions and lengthened their term.

2. The fear of long terms, which had formerly been felt as to both legislative and executive officers, gradually diminished, while the advantage of a term of sufficient length to permit some degree of continuity of policy became more apparent. The political philosophy of the Revolutionary period was built upon the assumption that an officer would abuse any authority with which he might be vested, and hence his term must be so short that he could have no opportunity to entrench himself in power. Experience, however, has led to the conviction that political morality has no particular connection with the calendar, while elections recurring in annual cycles impede the development of any continuous policy, and, through their demand for constant political activity, encourage the forma-

[1] For a detailed tabulation for each State, see Appendix A.

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tion of a class who make a profession of politics. This viewpoint was well expressed by Senator Lodge in these words:

> Frequency of elections tends to keep the great body of our people out of politics about half the time, and, of course, tends also to throw the conduct of politics into the hands of men who live by them and take part in them in order to make a living.

3. It was also argued that annual elections were so great a burden on the voters that it was becoming increasingly difficult to obtain a full expression of public opinion. It has long been recognized among students of government that no country in the world exacts so much from its electorate as does the United States. The number of elective officers — Federal, State, and local — is so great and the interval between elections is so short that in such a State as Massachusetts the voters are hardly free from one contest before they are involved in another. Since the institution of direct primaries the burden upon the voter has been increased. Human nature being what it is, it is not surprising that in many of these contests large numbers of voters fail to go to the polls. This may easily result in the habitual determination of governmental policies by a minority of the electorate, and it has therefore been argued that a relatively full expression of public opinion biennially is better than a partial expression of public opinion annually. The following table may be useful in judging of the weight of this argument:

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State.	Male Citizens of 21 Years and Over, Federal Census, 1910.	Votes cast for Governor.							
		1910.		1912.		1914.		1916.	
		Total Vote.	Per Cent.	Total Vote.	Per Cent.	Total Vote.	Per Cent.	Total Vote.	Per Cent.
Connecticut, .	254,597	166,181	65.2	190,394	74.8	181,107	71.1	213,807	83.9
Indiana, . .	775,688	615,591[1]	79.3	641,121	82.6	627,361[1]	80.8	706,627	91.0
Iowa, . .	607,050	412,964	68.2	461,206	75.9	422,579	69.6	513,848	84.6
Maine, . .	201,861	141,564	70.1	141,940	70.3	141,666	70.1	150,843[2]	74.7
Massachusetts,.	754,547	440,831	58.4	475,792	63.0	458,204	60.7	528,337	70.0
Michigan, .	733,615	383,762	52.3	548,921	74.8	440,448	60.0	651,518	88.8
New Hampshire,	111,052	84,167	75.7	83,278	74.9	84,108	75.7	86,242	77.6
Ohio, . .	1,317,652	924,463	70.1	1,036,731	78.6	1,129,223	85.6	1,171,458[2]	88.8
Pennsylvania, .	1,814,086	998,448	55.0	1,118,800[1]	61.6	1,111,252	61.2	1,219,316[1]	67.2
Rhode Island, .	119,620	67,622	56.5	78,176	65.3	78,023	65.2	88,568	74.0
Vermont, . .	100,540	54,787	54.4	64,812	64.4	62,092	61.7	60,854	60.5
Wisconsin, .	554,534	319,162	57.5	393,651	70.9	325,559	58.7	432,435	77.9

[1] Vote for State Treasurer. [2] Unofficial.

It should be noted that in the above table the number of male citizens who have attained their majority is taken as the basis of calculation, but in Massachusetts the existence of a literacy test reduces the number of potential voters. It should also be observed that in the elections tabulated above, Federal as well as State officers were chosen. How far this affects the total vote may perhaps appear from the fact that the total vote for Governor of Massachusetts in 1911, 1913, 1915, and 1917 was respectively 440,020, 460,873, 502,146, and 387,927.

4. The cost of elections is no inconsiderable part of the financial burden which taxpayers are obliged to bear. This item of governmental expense has been much increased in recent years by the institution of direct primaries which require the same sort of machinery as is required by an election. States which choose their legislators and other officers biennially of course incur only half the expense which annual elections would involve. How important this consideration is appears from the following tabulation of the cost of electing the members of the General Court and other State officers in

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Massachusetts in 1915, the last year for which complete data are now available.[1]

Election expenses incurred by the Secretary of the Commonwealth:		
Primary elections,	$35,422 44	
Ballots for elections,	6,387 86	
Blank forms for town officers,	5,698 32	
Ballot boxes,	1,804 20	
		$49,312 82
Registration and election expenses incurred by the cities and towns:		
Expenses of 35 cities,	$369,916 63	
Expenses of 318 towns (estimated),	151,137 65	
		521,054 28
Total,		$570,367 10

In addition to the expenses directly borne by taxpayers, returns filed in the office of the Secretary of the Commonwealth show that candidates expended $84,958.34, and that political committees expended $342,362.30. As many candidates do not file returns, the sums here given are less than the actual expenditure. It is clear, however, that an election in Massachusetts involves an expenditure on the part of the Commonwealth and its subdivisions and by candidates and political committees amounting to more than a million dollars. In many States it is argued that the benefits which accrue from annual elections are not sufficient to justify their cost.

IV. Effects of Biennial Elections and Sessions.

1. The Reëlection of Legislators.

Advocates of annual elections frequently urge that biennial elections of legislative bodies result in the choice of a much smaller proportion of experienced legislators than is the case in Massachusetts. It is undoubtedly true that in Massachusetts — the only State in the Union which renews the whole

[1] The expenditures of the Commonwealth are shown in Public Document No. 43 (1916). The expenditures of the cities and towns have been tabulated in the Bureau of Statistics by Mr. Theodore N. Wardell. The expenditures of the cities can be stated exactly from returns made to the Bureau of Statistics. The expenditures of the towns have been estimated from those of a considerable number of typical towns for which exact data can be obtained. In view of the method by which this computation was made, Mr. Wardell thinks that by the rule of averages the result is approximately correct.

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body of its Legislature every year — the proportion of members who have served in a like capacity before is much larger than in any other State, but whether this is a case of cause and effect is indeterminable.[1] States, however, which choose their law-making bodies biennially are not lacking in experienced legislators. In the ten States which appear in the following table it will be noted that in general about one-third the members had served before. Furthermore it must also be noted that almost all the States which have biennial elections choose their Senators for a term of four years, and in such cases it is a general practice to elect only one-half the Senators at one time. This insures a Senate at each session at least half of whose members have had previous legislative experience.

Previous Legislative Experience of Legislators in Ten States.

State.	Year.	Total Membership.	Number of Previous Terms.									Total Experienced Legislators.
			1.	2.	3.	4.	5.	6.	7.	8.	9.	
Connecticut, .	1917	293	64	27	11	3	–	–	–	–	1	106
Illinois, .	1913	204	45	27	21	9	1	2	2	–	1	108
Iowa, . .	1915	158	36	11	3	2	–	–	–	–	–	52
Maine, . .	1915	182	54[2]	–	–	–	–	–	–	–	–	54
Missouri, .	1915	176	45	16	9	5	–	–	–	–	–	75
Nebraska, .	1913	133	34	9	3	4	–	–	–	–	–	50
Ohio, . .	1915	156	43	6	3	1	–	–	–	–	–	53
Pennsylvania,	1916	257	53	22	9	8	4	2	–	1	–	99
Vermont, .	1917	276	51	6	3	–	1	–	–	–	–	61
West Virginia,	1915	116	26	10	3	–	1	–	–	–	–	40

2. *Extra or Special Sessions.*

An objection often raised to biennial sessions is that the period intervening between sessions is so long as to necessitate many special sessions. A study of a few typical States for a period of twenty years shows so little uniformity as to indicate that there is slight connection between biennial sessions and special sessions. Except in the case of Illinois, extra sessions in biennial States have been infrequent and of short duration.

[1] For a detailed tabulation of the previous legislative experience of members of the Legislature of Massachusetts, see Appendix B.

[2] These members have served at least one previous term. Many of them have served more than one.

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Even Alabama has had but two extra sessions since its adoption of the quadrennial system in 1901. On the other hand, Rhode Island with annual sessions has had four special sessions since 1901 and Massachusetts has had two since 1900.

Connecticut — Fall of 1916, one day.
New Hampshire — December 3 to 6, 1890.
Maine — March to April, 1912, eighteen days.
September, 1916, two days.
Vermont — 1898, less than a week (Spanish War).
1916, less than a week (Mexican trouble).
Indiana — 1908, twelve days.
Pennsylvania — January 15 to February 15, 1906.
Ohio — August 25 to October 22, 1902.
January 4 to March 12, 1909.
January 10 to February 16, 1914.
July 20, 1914, one day.
Illinois — October 8, 1907, to May 23, 1908.
December 14, 1909, to March 2, 1910.
June 11 to November 14, 1911.
March 26 to June 5, 1912 (second special).
April 24 to June 5, 1912 (third special).
November 22, 1915, to May 10, 1916.
January 11 to February 14, 1916 (second special).

V. Opinions of Officers of States having Biennial Elections or Sessions.

The judgment of officials as to the working of political institutions with which they have been in contact in the line of official duty is of value, but their views are likely to be colored by their personal predilections, and their statements of opinion are often influenced by the dominant sentiment of the community. Statements of officials from a considerable number of States in which the biennial system has been established are here submitted for whatever light they may throw upon the question.

Hon. Marcus H. Holcomb, Governor of Connecticut: "If any one should venture to raise the question of a return to the annual election and session of the legislature, beyond question there would be almost unanimity of sentiment against that change. In fact, it would be far easier to change from a bien-

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nial to a quadrennial than to go back to an annual election of State officers."

Hon. John E. Ramer, Secretary of State of Colorado: "As to the merits or demerits of the biennial elections and biennial sessions of the Legislature, one frequently hears the remark that our elections occur too frequently and that we are burdened with too many elections, but this sentiment is not crystallized to such an extent that we look for any change in the present system for at least some time to come."

Hon. Charles R. Miller, Governor of Delaware: "My experience has satisfied me that a term of four years, [for the Governor] with biennial sessions of the Legislature, is productive of the best results. By this method a Governor has the opportunity to become acquainted with the conditions in his State during the first two years he is in office and with a session of the Legislature occurring midway in his term it is possible for him to submit to the representatives of the people the information which he has acquired during the first two years of his term, and if the Legislature adopts his ideas he has two years of his term to put this legislation into operation."

Hon. Park Trammell, Governor of Florida: "I beg to advise that it has always been the custom in this State as well as the mandate of the Constitution that the Legislature convene every two years. This system I believe much more satisfactory than having annual sessions. We have never had any of our officers elected for terms of less than two years. Up to last year about one-half of the county officers were elected for terms of two years and the other half for terms of four years, but at the general election in 1914 a constitutional amendment requiring that all the county officers be elected for four years, except the members of the House of Representatives, was adopted. We believe that the longer terms promote the efficiency of the service and that it will result very beneficially."

Hon. M. Alexander, Governor of Idaho: "Biennial elections, as well as biennial sessions of the Legislature appear to be sufficient for all legislation that is necessary. In fact, usually more legislation is enacted even in a biennial period than there is any real necessity for."

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Mr. Finley F. Bell, Secretary, Legislative Reference Bureau, Illinois: "Concerning the question of biennial elections and sessions versus annual ones, I believe the consensus of opinion in this State, at the present time, is that we have too many elections and the cost of same is reaching a point where something will have to be done to curb the expense."

Hon. Oakley C. Curtis, Governor of Maine: "The fact that sentiment in a majority of States has brought about changes from annual to biennial elections is the best evidence of the trend of public opinion in favor of the longer term. Frequency of elections and consequent changes of administration seem to me to handicap good government; and I am of the opinion that annual legislative sessions tend toward enactment of a multiplicity of useless and unwise laws with which the statutes of many States are surfeited."

Mr. Henry E. Dunnack, State Librarian of Maine: "The fact that no attempt has ever been made, since 1881, to change our biennial sessions and elections to annual, may be of interest to you."

Hon. Woodbridge M. Ferris, Governor of Michigan: "I can't imagine an argument for annual elections and annual sessions of the Legislature. In my judgment every Governor should be elected for four years and a Legislature should not convene more than once in two years. To be perfectly frank about the matter it would be far better to have the Legislature convene once in four years."

Hon. W. S. Hammond, Governor of Minnesota: "There is no sentiment in favor of annual elections and annual sessions. Personally I am inclined to favor one election and two sessions of the Legislature every four years."

Hon. Earl Brewer, Governor of Mississippi: "In Mississippi elections for Representatives and Senators in our Legislature are held every four years, and sessions of the Legislature every two years. I prefer this plan to having elections every two years. By electing for four years legislators gain experience the first session that is valuable to them the next."

Hon. Cornelius Roach, Secretary of State of Missouri: "Biennial elections and biennial sessions of the Legislature are giving general satisfaction in this State. Most official terms are four

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years, but nearly half the expiration dates of those terms occur in what is known as the 'off-year election.' "

Hon. A. M. Alderson, Secretary of State of Montana: "Personally, I am inclined to believe that Representatives might be of more value to the State if their terms were four years instead of two. The ordinary legislator just begins to understand something of his duties when the session adjourns. He could be of more use to the State in the second session than he possibly could be during his first experience. I much prefer biennial sessions of the Legislature to annual sessions, and with our system of referendum am inclined to believe that were it not for appropriations, quadrennial sessions would be preferable to biennial sessions."

Hon. Rolland H. Spaulding, Governor of New Hampshire: "For many years, now, in New Hampshire biennial elections and biennial sessions of the Legislature have been the law; and I do not think there is any sentiment whatever in the State for a change to annual sessions and elections."

Mr. W. S. Wilson, Legislative Reference Librarian of North Carolina: "There has been no agitation for a change in the biennial session of the General Assembly."

Mr. John R. Cassidy, Clerk of the General Assembly of Ohio: "From 1856 up to and including 1893, Ohio had annual sessions of the Legislature although the elections came biennially. Since 1893 we have had biennial sessions only. I think the sentiment of the State is strongly in favor of the biennial sessions and that annual sessions would not now be tolerated."

VI. The Quadrennial System of Alabama.

One of the most interesting experiments in State government is the system adopted by Alabama in 1901, by which the two houses of the Legislature are chosen for four years, and but one regular session, limited to fifty days, is provided for in each quadrennial period. The constitutional provisions are as follows:

Senators and Representatives shall be elected by the qualified electors on the first Tuesday after the first Monday in November, unless the

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Legislature shall change the time of holding elections, and in every fourth year thereafter. The terms of office of the Senators and Representatives shall commence on the day after the general election at which they are elected, and expire on the day after the general election held in the fourth year after their election, except as otherwise provided in this Constitution.[1] . . .

The Legislature shall meet quadrennially at the Capitol, in the Senate chamber, and in the Hall of the House of Representatives, on the second Tuesday in January next succeeding their election, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under this Constitution, nor longer than fifty days at any subsequent session.[2]

The committee of the Convention which recommended the establishment of the quadrennial system said in support of the change:

Section 5 is changed so as to provide for quadrennial instead of biennial sessions of the Legislature. In view of the prohibitions to be placed on the legislative power to pass local laws, there will be hereafter neither a demand nor a necessity for biennial sessions. The change is recommended on the additional grounds that it will prevent hasty and ill-advised attempts to repeal general laws before they have been long enough in force to admit of a fair test of their merits, and it will also conduce, by removing early opportunity for repeal, to mature and careful deliberation by the Legislature. The tendency to permanency of the legislative enactments will be greatly increased, and much expense saved to the State.[3]

As this arrangement has now been in force for sixteen years, a sufficient time has elapsed to test it and to allow the formation of a fairly well-settled public opinion as to its merits.

The first point to be noted is the actual operation of the constitutional limitation upon the length of the legislative session. While each regular session is limited to fifty days, the Legislature is in fact at work about one hundred days, and the per diem remuneration of the members covers that period of time. The constitutional limitation is held to apply only to the days when there is a session of the Legislature,

[1] *The Constitution of Alabama of 1901*, sec. 46.

[2] *Ibid.*, sec. 48.

[3] *Journal of the Constitutional Convention of Alabama of 1901*, 467. The argument set forth above was repeated in substance in the Convention's Address to the People.

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while those days devoted to committee work are not so included although they are part of the members' legislative activity and are paid for accordingly.

In substituting quadrennial for biennial sessions, the jurisdiction of the Legislature was considerably curtailed, especially in the matter of local or special legislation. The Constitution enumerates thirty-one classes in which the Legislature is forbidden to pass any "special, private or local law." By this arrangement it was hoped that one quadrennial session devoted entirely to general legislation would be sufficient to meet the needs of the State.

In the case of so radical a change as that made in the Alabama Constitution of 1901 it is not surprising that much difference of opinion as to its wisdom existed at the time it was made, and that some difference of opinion still exists as to whether the State has gained or lost by the introduction of the new system. For the purpose of throwing light upon the question, an effort has been made to ascertain the views of each incumbent of the office of Governor since the adoption of the Constitution of 1901. One of these gentlemen made no reply to the communications sent him, but the present Governor and two of his predecessors have expressed themselves on one or more of the following points:

1. Does public sentiment in Alabama seem to support the quadrennial system?

2. What has been the effect of the quadrennial system upon the character of legislation?

3. What has been the effect upon the volume of legislation enacted?

As to the present state of public sentiment, it is significant that every Legislature which has assembled since 1901 has submitted a constitutional amendment providing for the restoration of biennial sessions. As to these proposals, Governor Henderson writes:

> Each session of the Legislature since the constitutional provision fixing quadrennial sessions has passed a resolution recommending an amendment to the Constitution restoring biennial sessions. These proposed amendments have uniformly been voted down by large majorities. This shows the wishes, at least, of the majority of the electorate of the State.

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My own opinions and views coincide with those of the majority. If there should be an urgent reason why the Legislature should be assembled, the Governor has authority to call them into special session. The evils that we have gotten rid of through quadrennial sessions overbalance the inconveniences of biennial sessions.[1]

Ex-Governor Jelks (Governor of Alabama, 1901–07) writes:

As to a sentiment in favor of return to biennial sessions: there certainly is a sentiment in this State in favor of repealing that section of the Constitution of 1901 providing for quadrennial sessions, but it was not sufficiently strong to carry at an election when the voters had an opportunity to pass on it. The same result would probably follow if the voters had another opportunity to pass on it. Sessions of the Legislature upset business in the State. I do not myself believe that the sentiment in favor of a change is growing. Also, it does not appear to me that the new provision has worked to the detriment of the State in any respect.

As to the effect of the quadrennial system upon the character of legislation, Ex-Governor O'Neal (Governor of Alabama, 1911–15) writes:

Instead of preventing, the quadrennial system has proven to be the most prolific source yet devised for hasty and ill-considered legislation. The vice of the system was that it denied the people for four years the right to repeal or revise vicious or unwise legislation. The right of the people to self-government was suspended for four years, and during that period they were forced to endure without remedy the evil effects of any bad laws that might exist upon the statute books.

This is not the view, however, of Ex-Governor Jelks, who says:

As to the statement that the quadrennial sessions have resulted in ill-digested legislation, I think this is not true, or, if true, only true in a measure. We have always had in this State, and probably in all other States, ill-digested legislation and under present conditions will probably always have ill-considered laws. The larger number of members of the Legislature, I presume, of all States are not very responsible people, meaning to say that the best material in the counties do not offer for legislative honors. There is no special occasion for ill-digested legislation growing

[1] The quotations from Governor Henderson and Ex-Governor Jelks are taken from letters to the writer. The quotations from Ex-Governor O'Neal are from his article, "Distrust of State Legislatures — the Cause, the Remedy," *North American Review*, 199: 684 (May, 1914).

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out of the fact that they are only in session presumably one time in four years. . . . I do not believe it at all true that under the new provision legislative acts have been less well digested than the acts of those Legislatures which went before.

As to the effect of the quadrennial system upon the volume of legislation Ex-Governor O'Neal says that "the prohibition of local legislation did not result in lessening the demand for general legislation." Just why it should be expected that the reduction in local legislation should affect the amount of general legislation is not clear. Apparently there is no connection between the two. On this aspect of the matter, Ex-Governor Jelks observes:

This can hardly be true at all, and I say this without looking over the acts of late years. Many theretofore subjects for legislation were positively eliminated and it cannot be possible that this elimination has resulted in no decrease of legislative action. The excuse for making a contrary statement probably grows out of the fact that the legislative acts of late years are perhaps found to be as extensive in volume as the acts of previous Legislatures.

So far as can be judged from the votes of the people and from the testimony of the three executives who have expressed themselves, Alabama seems well-satisfied with the results of its quadrennial legislative elections and sessions.

VII. The Agitation for Biennial Elections and Sessions in Massachusetts.

1. Action in the Legislature.

The question of the biennial election of executive and legislative officers and of biennial sessions of the General Court has been discussed in Massachusetts for more than a half century. In the Constitutional Convention of 1853 the committee to which the subject was referred reported that it was "inexpedient for the Convention to act thereon." This report was concurred in by the Convention without debate. Four years later in 1857 the subject was introduced into the

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Legislature and met the same fate which it had encountered in the Constitutional Convention. In 1861, 1866, 1867, and 1869 fruitless attempts were made to obtain favorable action, but after 1870 the movement in favor of biennials gathered considerable impetus. The nature of the amendments proposed and the action taken by each house thereon are indicated in the following table:

Senate and House Votes on Biennials since 1853.

Session of —	Senate.	House.
1867,[1]	–	45–70
1870,[2]	–	Rejected; voice vote.
1871,[2,3]	Adversely reported.	–
1876,[4]	Adversely reported.	–
1877,[5]	–	Adversely reported.
1878,[4]	–	Adversely reported.
1879,[4]	31–0	170–22
1880,[1]	25–7	114–53
1881,[1]	–	111–86
1882,[1]	26–15	60–93
1883,[4]	23–14	133–64
1884,[4]	22–4	139–87
1885,[1]	34–2	158–55
1885,[4]	29–9	153–68
1886,[1]	23–12	112–86
1888,[6]	24–8	126–72
1888,[7]	20–13	105–78
1888,[3]	15–18	–
1890,[1]	21–6	143–38
1891,[1]	23–16	116–101
1892,[1]	–	120–87
1893,[1]	24–9	93–81
1894,[1]	19–9	106–83
1895,[1]	26–4	163–57
1896,[1]	24–8	175–50[6]
1896,[1]	24–8	176–49[7]
1914,[1]	8–15	–
1915,[1]	24–14	–
1916,[1]	Adversely reported.	–
1917,[1,4]	Adversely reported.	–

[1] Biennial elections of State officers and General Court.
[2] Triennial elections for Senate, biennial for House.
[3] Biennial sessions.
[4] Biennial elections of State officers and General Court and biennial sessions.
[5] Triennial elections for State officers and for the Senate, biennials for House.
[6] Biennial elections of State officers.
[7] Biennial elections of General Court.

In spite of the large vote in favor of the biennial principle which was cast several times in the Legislature, amendments

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embodying it have been submitted to the people only once. In 1896 two amendments, one establishing biennial elections of State officers and the other providing only for biennial elections of members of the General Court, were submitted to the people and rejected by large majorities.[1] The following table shows the vote in detail:

Popular Vote on Biennials.

First Article. — Establishing Biennial Elections of State Officers.

County.	Votes.	
	Yes.	No.
Suffolk,	25,193	42,025
Essex,	11,673	26,455
Middlesex,	25,785	33,545
Worcester,	12,077	15,922
Hampshire,	3,115	2,252
Hampden,	9,954	6,961
Franklin,	2,669	1,948
Berkshire,	4,817	3,491
Norfolk,	6,744	9,613
Plymouth,	3,727	7,310
Bristol,	8,314	9,872
Barnstable,	1,130	1,421
Dukes County,	139	262
Nantucket,	168	186
Totals,	115,505	161,263

Second Article. — Establishing Biennial Elections of Members of the General Court.

Suffolk,	23,134	41,316
Essex,	10,614	25,692
Middlesex,	23,804	32,356
Worcester,	11,088	15,607
Hampshire,	2,826	2,186
Hampden,	9,066	6,628
Franklin,	2,454	1,893
Berkshire,	4,341	3,303
Norfolk,	6,248	9,281
Plymouth,	3,420	6,962
Bristol,	7,335	9,267
Barnstable,	989	1,321
Dukes County,	129	235
Nantucket,	141	164
Totals,	105,589	156,211

[1] Since the above statement was prepared, an amendment providing for biennial elections has been adopted in Massachusetts by a vote of 142,868 to 108,588.

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2. Attitude of Governors of Massachusetts.

Governor Claflin (1869–72) favored biennial sessions and in his second term an amendment providing for the triennial election of Senators and the biennial election of Representatives was favorably reported in the House, but was rejected. In the following year Governor Claflin renewed his recommendation of biennial sessions but it was adversely reported in the Senate. In 1878 Governor Rice strongly recommended both biennial elections and biennial sessions, and in 1879 Governor Talbot made the same recommendation. Accordingly an amendment embodying his recommendation was enacted by the requisite vote in both the Senate and the House. In the following Legislature, however, the amendment was divided. One amendment provided for biennial elections of the Governor, Lieutenant-Governor, Secretary, Treasurer, Auditor and Attorney-General, while the other provided for biennial elections of Senators and Representatives. This division of the amendment made it necessary for the substitute amendments to be submitted again to the Legislature in the following year. Meantime, Governor Talbot had been succeeded by Governor Long, who "questioned the expediency of biennial elections," and his opposition is doubtless responsible in part for the failure of the measure to receive the necessary vote when it reached its final stage in the House. At a meeting of the Massachusetts Club, Governor Long defended annual elections at considerable length and answered the argument so frequently heard that all the States in the Union, excepting only Rhode Island and Massachusetts, had adopted biennials by pointing out that a majority of the States had adopted the elective system for their judiciary, and inquiring whether any Massachusetts man would be willing to give up the appointive system. In reply to the argument that biennials would result in better legislation, better men, and better representatives, Mr. Long said:

> I find that under our system of annual elections it used to be a custom in Massachusetts to send the same man, if he were a deserving man, year after year, for fifteen or twenty years. I find that that obtains some at the present, but not so much as it formerly did. Why? Because the great body of our people are so well educated and trained for public

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affairs owing to our system, which holds government close to the people, that you have a great abundance of excellent material to draw from.

Governor Robinson (1884–87) strongly advocated biennial elections and sessions, and in his inaugural in 1886 he said:

It is not without striking significance that in every Legislature which has acted upon this question in this State, the members coming freshly from the people, the proposition has but narrowly failed of adoption.

Governor Ames said in 1888, when speaking of biennial elections and prohibition:

It will be your duty to inquire earnestly into the probable bearing of these measures upon the public welfare with a view if approved to give them the legislative sanction which is a necessary preliminary to the direct expression of the people thereupon.

Governor Brackett in 1890 advocated biennial elections but not biennial sessions of the Legislature, saying:

One of the objections urged against the system of biennial elections and sessions, in those States in which it has been adopted, is that very few members of the Legislature are re-elected, so that it is largely composed of men without previous legislative experience. . . . Under our present system about one-third only of the members of the House of Representatives are re-elected, as a rule. With biennial elections this proportion would doubtless be diminished. But a Legislature elected for two years and meeting annually would, at its second session, be composed wholly of experienced members. The effect would be, as I believe, that the members would be disposed to postpone to the second session propositions of questionable expediency coming before them at the first, in order that they might have ample time for their consideration. On the other hand, at the second session they would not be inclined, except in special exigencies, to enter again upon the consideration of questions which had been finally disposed of at the first.

Governor Walsh in 1914 mentioned biennial elections among the measures "most persistently pressing for constitutional authority," while in his inaugural of 1915 he said:

It is impossible for those who have not been in the public service to realize how much its efficiency is impaired by the necessity of making ready and participating in the struggle of annual elections. The loss of time is great, but the unrest, distraction and diversion of thought

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from the channels of public service cause a still greater loss in the value of the public servant. The executive officers scarcely become acquainted with their duties before they are obliged to enter upon an elaborate campaign to defend themselves against attack and oftentimes partisan abuse, and, perhaps, are turned out of office before they have had an opportunity to prove their capacity, or to put in operation the principles or reforms upon the advocacy of which they may have been elected.

I recognize the necessity of keeping the government close to the people and giving them an opportunity to pass judgment upon the acts of their servants as often as necessary, but if we had the initiative and referendum and the recall we should have the means of controlling the recalcitrant official or Legislature, and I believe it would then be of great advantage to the Commonwealth to have less frequent elections.

Governor McCall in 1916, in recommending the calling of a Constitutional Convention, said:

The party of which a majority of us are members declared in its last platform in favor of amendments for biennial elections.

3. The Forces for and against Biennials.

An unusual array of forces have been allied in favor of biennials in the last three years. The party platforms of the Democrats have not mentioned the subject, but the platforms of the Republicans in 1915 and 1916 and of the Progressives in 1914 and 1915 favored biennials. In the cause of biennials have also been enlisted a great majority of the newspapers, many college and professional men and organizations of business men throughout the Commonwealth. The labor organizations, the great mass of the Democratic party (at least until 1914), a minority of Republican political leaders, and a few Democratic newspapers of the State have been aligned for annual elections. The petitions in favor of biennial elections, according to the Journals of the Senate and House, have been mainly from business organizations and business and professional men, while most of the remonstrances came from organized labor. As between the two political parties, the support for biennials in the Legislature has come almost entirely from the Republicans, while the opposition has come chiefly from the Democrats. Among the leaders of opinion in Massachusetts who have expressed themselves in favor of biennials are President Eliot, Senator Lodge, President

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Seelye, Charles Francis Adams, Judge Francis C. Lowell, Samuel J. Elder, and Major Henry L. Higginson. Among those who have been prominent in opposition were Ex-Governor Boutwell, Ex-Governor Long, Senator Hoar and Senator Dawes.

In 1886 an especially vigorous campaign was waged for biennials. The subject was more thoroughly discussed than it had ever been before. The pioneer statesmen were quoted in opposition, and John Adams' famous dictum, "Where annual elections end, there slavery begins," was resurrected and given a new lease of life. Those who made most use of this phrase written by John Adams in 1776 overlooked the fact that in 1787 he speaks of annual elections as being on trial, while in 1808 he is protesting against the annual election of members of Congress on the ground that the interval between elections would be so short that party passion would have no time to cool.[1] James G. Blaine, in a speech at Augusta, January 7, 1886, six years after Maine's change to biennial sessions of the Legislature, regretted her action and said, in words much quoted in Massachusetts:

> I believe it is a mistake in the republican government to get rid of frequent elections. Perhaps we need not yet fear for the beginning of tyranny as John Adams warned us we should, if we dropped annual elections, but I am persuaded that we would find great advantage in retaining the old system. People must govern themselves or somebody will soon govern them, and there is no way to keep public government fresh, strong and effective like frequent and well-contested elections.

Mr. Blaine predicted that Maine would return to the old system, but it has not done so, and in the same year in which Mr. Blaine made his prediction Nelson Dingley said that if the question were resubmitted to the people of Maine he thought they would sustain biennial elections and biennial sessions by a vote of three to one.

Senator Hoar, in an address January 3, 1886, before the Massachusetts Club, said:

> Of the 106 annual elections we have had under the Constitution of 1780, not more than five or six have been found by the people to be a considerable burden. Two of those, the elections of 1878 and 1879, had a vast and most beneficent effect in instructing the working men in

[1] *Works*, IV, 533.

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sound principles of finance and currency as instruction will work all the more and surely than amended laws. There is not a dollar of the manufacturing capital of Massachusetts, not a dollar of the $277,000,000 in her savings banks, not a note or bond that makes up the property of her widows or orphans, that is not more valuable to-day by the reason of the instruction in the application of common sense and common honesty to these questions, than the laboring man gained from the discussions with General Butler in those years.

Congressman, afterward Speaker, Thomas B. Reed, on January 25, 1892, wrote a letter which was read at the hearing on biennials before the Committee on Election Laws, in which he said:

I think we made a great mistake in Maine in changing our Constitution in regard to biennials. The project was submitted to the people when a great contest for supremacy for other matters was going on between the two political parties, their very closely matched, and there was no opportunity for full discussion. The amendment was passed without suitable consideration. . . . The plan of refusing the people the right to review every year the doings of their representatives seems to me to be one of the many experiments which are always starting up to carry on a government of the people without the people. It is, of course, an inconvenience for vested rights, privileges and luminaries to be reviewed every year by the people, but it is of the essence of republican government. When you double the prize for which corrupt politicians or interested monopolists may strive by making two years of power the stake, instead of one, you double the incentive to fraud in elections, to bribery and wrongdoing, and divide by two the power of the people to correct wrong, to make progress and punish dishonest servants. If you wish the benefit of free government, you must take the methods, even if they are onerous. If the people are to govern, they have got to take the trouble to govern. Government by the people will not run itself. All approximations toward despotism will — for a while. Contrive it by whatever institutions you may, by wisdom from inside or wisdom from outside, no people can ever have a better government than they can make for themselves. If they allow the ignorant, the scheming politicians or any one else to govern them while they have the voting power, and frequent opportunities to exercise it, they deserve no better government, and will be sure in the end not to get it. After all the plans for avoiding elections, . . . have duly failed and brought their due disasters, we shall bethink ourselves of that true system of government which finds its exposition in the New England town, the system of making every citizen interested in government, by demanding of him every year to say what he thinks of his servants and their acts, and teaching him to eschew, as inventions of Satan, all these schemes for getting himself governed without bother.

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APPENDIX A.

TABLE SHOWING MEMBERSHIP, TERM OF LEGISLATURE, TERM OF GOVERNOR, FREQUENCY OF SESSIONS AND LIMIT OF SESSIONS.

STATE.	MEMBERSHIP IN —		TERM OF —		Term of Governor.	Sessions held.	Limit of Session.
	Senate.	House.	Senate.	House.			
Alabama,	35	106	4	4	4	Quadrennial.	50 days.
Arizona,	19	35	2	2	2	Biennial.	60 days.
Arkansas,	34	99	4	2	2	Biennial.	60 days.
California,	40	80	4	2	4	Biennial.	None.[1]
Colorado,	35	65	4	2	2	Biennial.	90 days.
Connecticut,	35	258	2	2	2	Biennial.	5 months.[2]
Delaware,	17	35	4	2	4	Biennial.	60 days.
Florida,	32	73	4	2	4	Biennial.	60 days.
Georgia,	44	189	2	2	2	Annual.	50 days.
Idaho,	37	65	2	2	2	Biennial.	60 days.
Illinois,	51	153	4	2	4	Biennial.	None.
Indiana,	50	100	4	2	4	Biennial.	61 days.
Iowa,	50	108	4	2	2	Biennial.	None.
Kansas,	40	125	4	2	2	Biennial.	50 days.
Kentucky,	38	100	4	2	4	Biennial.[3]	60 days.
Louisiana,	41	118	4	4	4	Biennial.[3]	60 days.
Maine,	31	151	2	2	2	Biennial.	None.
Maryland,	27	102	4	2	4	Biennial.[3]	90 days.
Massachusetts,[4]	40	240	1	1	1	Annual.	None.
Michigan,	32	100	2	2	2	Biennial.	None.
Minnesota,	67	130	4	2	2	Biennial.	90 days.
Mississippi,	45	136	4	4	4	Biennial.	None.
Missouri,	34	142	4	2	4	Biennial.	70 days.
Montana,	41	95	4	2	4	Biennial.	60 days.
Nebraska,	33	100	2	2	2	Biennial.	60 days.
Nevada,	22	53	4	2	4	Biennial.	60 days.
New Hampshire,	24	404	2	2	2	Biennial.	None.
New Jersey,	21	60	3	1	3	Annual.	None.
New Mexico,	24	49	4	2	2	Biennial.	60 days.
New York,	51	150	2	1	2	Annual.	None.
North Carolina,	50	120	2	2	4	Biennial.	60 days.
North Dakota,	49	113	4	2	2	Biennial.	60 days.
Ohio,	36	128	2	2	2	Biennial.	None.
Oklahoma,	44	111	4	2	4	Biennial.	60 days.
Oregon,	30	60	4	2	4	Biennial.	40 days.
Pennsylvania,	50	207	4	2	4	Biennial.	None.
Rhode Island,	39	100	2	2	2	Annual.	60 days.
South Carolina,	44	124	4	2	2	Annual.	40 days.
South Dakota,	45	104	2	2	2	Biennial.	60 days.
Tennessee,	33	99	2	2	2	Biennial.	75 days.
Texas,	31	142	4	2	2	Biennial.	60 days.
Utah,	18	46	4	2	4	Biennial.	60 days.
Vermont,	30	246	2	2	2	Biennial.[3]	None.
Virginia,	40	100	4	2	4	Biennial.[3]	60 days.
Washington,	42	97	4	2	4	Biennial.	60 days.
West Virginia,	30	94	4	2	4	Biennial.	45 days.
Wisconsin,	33	100	4	2	2	Biennial.	None.
Wyoming,	27	57	4	2	4	Biennial.	40 days.

[1] Split session — first part 30 days, recess 30 days, second part no limit.
[2] First Wednesday after first Monday in June.
[3] Meets in even years. All others in odd years.
[4] Since the above table was prepared a constitutional amendment has been adopted providing that in 1920 the Governor and other State officers and members of the Legislature shall be chosen for terms of two years.

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Appendix B.

Previous Legislative Experience of Members of the Legislature of Massachusetts.

Senate (40 Members).

Date.	Years.																		Total.
	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	
1889, . . .	7	15	12	3	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	39
1890, . . .	2	8	14	4	2	1	–	–	–	–	–	–	–	–	–	–	–	–	–	31
1891, . . .	8	11	9	1	1	2	1	–	–	–	–	–	–	–	–	–	–	–	–	33
1892, . . .	8	7	11	9	2	–	2	–	–	–	–	–	–	–	–	–	–	–	–	39
1893, . . .	5	15	6	3	2	2	–	1	–	–	–	–	–	–	–	–	–	–	–	34
1894, . . .	5	16	10	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	36
1895, . . .	10	15	10	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	–	36
1896, . . .	4	20	8	5	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	37
1897, . . .	2	17	16	1	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	38
1898, . . .	5	7	15	10	–	1	–	–	–	–	–	–	–	–	–	–	–	–	–	38
1899, . . .	5	13	9	4	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	35
1900, . . .	9	10	12	4	2	2	–	–	–	–	–	–	–	–	–	–	–	–	–	39
1901, . . .	3	17	7	3	3	–	2	–	–	–	–	–	–	–	–	–	–	–	–	35
1902, . . .	6	13	11	3	2	1	–	1	–	–	–	–	–	–	–	–	–	–	–	37
1903, . . .	5	12	13	2	2	–	1	–	1	–	–	–	–	–	–	–	–	–	–	36
1904, . . .	6	9	14	6	–	3	–	1	–	–	–	–	–	–	–	–	–	–	–	39
1905, . . .	1	16	8	7	1	1	4	–	–	–	–	–	–	–	–	–	–	–	–	38
1906, . . .	3	6	11	6	4	–	1	3	–	–	–	–	–	–	–	–	–	–	–	34
1907, . . .	9	6	5	3	4	2	–	–	2	–	–	–	–	–	–	–	–	–	–	31

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1908, . . .	8	9	6	4	4	3	–	–	–	2	–	–	–	–	–	–	–	–	–	36
1909, . . .	2	14	9	3	3	2	1	–	–	–	–	–	–	–	1	–	–	–	–	35
1910, . . .	8	3	12	10	3	1	–	–	–	–	–	–	–	–	–	1	–	–	–	38
1911, . . .	3	8	5	8	6	1	–	–	–	–	–	–	–	–	–	–	1	–	–	32
1912, . . .	5	5	8	8	4	4	1	–	–	–	–	–	–	–	–	–	–	1	–	36
1913, . . .	6	11	10	4	5	–	1	–	–	–	–	–	–	–	–	–	–	–	1	38
1914, . . .	1	7	13	7	4	3	–	1	–	–	–	–	1	–	–	–	–	–	–	37
1915, . . .	3	6	8	10	9	1	1	–	1	–	–	–	–	–	–	–	–	–	–	39
1916, . . .	1	6	8	7	8	7	1	2	–	–	–	–	–	–	–	–	–	–	–	40
1917, . . .	1	6	7	9	6	3	4	–	–	–	–	–	–	–	–	–	–	–	–	36

House of Representatives (240 Members).

1889, . . .	65	13	10	4	–	–	1	–	–	–	–	–	–	–	–	–	–	–	–	93
1890, . . .	80	14	6	3	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	106
1891, . . .	63	15	5	3	1	2	–	1	–	–	–	–	–	–	–	–	–	–	–	89
1892, . . .	80	16	2	1	–	1	–	–	1	–	–	–	–	–	–	–	–	–	–	101
1893, . . .	76	19	3	–	1	–	1	–	–	1	–	–	–	–	–	–	–	–	–	101
1894, . . .	85	22	6	1	–	–	–	1	–	–	1	–	–	–	–	–	–	–	–	116
1895, . . .	83	18	8	–	–	–	–	–	1	–	–	1	–	–	–	–	–	–	–	111
1896, . . .	81	17	8	5	–	–	–	–	–	1	–	–	1	–	–	–	–	–	–	113
1897, . . .	81	23	6	5	2	–	–	–	–	–	1	–	–	–	–	–	–	–	–	118
1898, . . .	101	21	7	4	3	2	–	–	–	–	–	–	–	–	–	–	–	–	–	138
1899, . . .	63	31	4	4	3	3	1	–	–	–	–	–	–	1	–	–	–	–	–	110
1900, . . .	94	29	10	3	4	1	1	–	–	–	–	–	–	–	1	–	–	–	–	143
1901, . . .	66	36	12	3	1	3	–	1	–	–	–	–	–	–	–	–	–	–	–	122
1902, . . .	74	20	16	8	3	1	4	1	1	–	–	–	–	–	–	–	–	–	–	128
1903, . . .	74	27	6	5	8	2	1	2	1	1	–	–	–	–	–	–	–	–	–	127
1904, . . .	75	20	12	5	2	3	1	–	2	1	–	–	–	–	–	–	–	–	–	121
1905, . . .	90	24	9	8	3	2	–	–	1	1	1	–	–	–	–	–	–	–	–	139
1906, . . .	69	39	10	5	3	3	2	1	1	–	1	1	–	–	–	1	–	–	–	136

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PREVIOUS LEGISLATIVE EXPERIENCE OF MEMBERS OF THE LEGISLATURE OF MASSACHUSETTS — *Concluded.*

House of Representatives (240 Members) — Concluded.

DATE.	YEARS.																			TOTAL.
	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	
1907, . . .	71	19	14	5	2	1	3	2	1	–	1	1	1	–	–	–	–	–	–	121
1908, . . .	94	34	10	10	2	1	1	3	–	–	–	–	–	1	–	–	–	–	–	156
1909, . . .	58	42	17	4	4	1	1	1	–	–	–	–	–	–	–	–	1	–	–	129
1910, . . .	73	26	17	10	2	3	–	–	2	–	–	–	–	–	–	–	–	1	–	134
1911, . . .	63	38	7	2	5	2	2	–	1	2	–	–	–	–	–	–	–	–	–	122
1912, . . .	85	34	16	5	1	4	–	2	1	–	2	–	–	–	–	–	–	–	–	150
1913, . . .	65	32	18	10	3	–	3	–	1	1	1	1	–	–	–	–	–	–	–	135
1914, . . .	70	33	17	7	6	2	–	1	–	–	1	–	–	–	–	–	–	–	–	137
1915, . . .	69	33	24	11	4	3	1	–	–	–	–	1	–	–	–	–	–	–	–	146
1916, . . .	68	46	21	16	9	4	2	–	–	–	–	–	–	–	–	–	–	–	–	166
1917, . . .	60	45	25	9	11	8	4	2	–	–	–	–	–	1	–	–	–	–	–	165

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APPENDIX C.

MASSACHUSETTS BIENNIAL AMENDMENT.

ADOPTED NOVEMBER 5, 1918.

SECTION 1. The Governor, Lieutenant-Governor, Councillors, Secretary, Treasurer and Receiver-General, Attorney-General, Auditor, Senators and Representatives shall be elected biennially. The Governor, Lieutenant-Governor and Councillors shall hold their respective offices from the first Wednesday in January succeeding their election to and including the first Wednesday in January in the third year following their election and until their successors are chosen and qualified. The terms of Senators and Representatives shall begin with the first Wednesday in January succeeding their election and shall extend to the first Wednesday in January in the third year following their election and until their successors are chosen and qualified. The terms of the Secretary, Treasurer and Receiver-General, Attorney-General and Auditor shall begin with the third Wednesday in January succeeding their election and shall extend to the third Wednesday in January in the third year following their election and until their successors are chosen and qualified.

SECTION 2. No person shall be eligible to election to the office of Treasurer and Receiver-General for more than three successive terms.

SECTION 3. The General Court shall assemble every year on the first Wednesday in January.

SECTION 4. The first election to which this article shall apply shall be held on the Tuesday next after the first Monday in November in the year nineteen hundred and twenty, and thereafter elections for the choice of all the officers before-mentioned shall be held biennially on the Tuesday next after the first Monday in November.

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BULLETIN No. 10

THE SHORT BALLOT

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THE SHORT BALLOT.

1. The Meaning of the Term "Short Ballot."

The term "short ballot" has come into use during the last ten years in connection with the movement to reduce the number of elective offices in States and municipalities. It is applied to any ballot upon which the names of a relatively small number of candidates appear. The "short-ballot" movement contemplates the *election* of those officers only who are to determine policies and the *appointment* of those who are to act in a purely administrative capacity.

2. The "Short Ballot" Principles.

The principles upon which the agitation for a "short ballot" is founded are enunciated by the National Short Ballot Association as follows: —

1. That only those offices should be elective which are important enough to attract (and deserve) public examination.
2. That very few offices should be filled by election at one time, so as to permit adequate and unconfused public examination of the candidates.
3. That the application of these principles should be extended to all cities, counties and States.

3. Some Official Opinions upon These Principles.

President Woodrow Wilson: "Simplification! Simplification! is the task which awaits us — to reduce the number of persons voted for to the absolute working minimum, knowing whom you have selected, knowing whom you have trusted, and having so few persons to watch that you can watch them. That is the way we are going to get popular control back in this country and that is the only way we are going to get political control back."

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Ex-Governor Charles E. Hughes: "There should be a reduction in the number of elective offices. The ends of democracy will be better attained to the extent that the attention of the voters may be focussed upon comparatively few offices, and the incumbents can be held strictly accountable for administration."

Ex-President William H. Taft: "I have the fullest sympathy with every reform in governmental and election machinery which will facilitate the expression of the popular will, such as the short ballot and reduction of elective offices."

Hon. Elihu Root, President of the New York Constitutional Convention: "Now anybody can see all these one-hundred fifty-two outlying agencies, big and little, lying around loose, accountable to nobody, spending all the money they can get, violate every principle of economy, of efficiency, of the proper transaction of business. Everyone can see that all around us are political organizations carrying on the business of government, that have learned their lesson from the great business organizations which have been so phenomenally successful in recent years."

4. The Ballot in Massachusetts.

Massachusetts has not a particularly long ballot, inasmuch as the judges are appointive, while many cities elect their officers on a date apart from the State and national elections, and the number of elective county officials is relatively small. The voter is not ordinarily confronted with a ballot covering from fifty to one hundred elective offices as is the case in many other States. (See Appendix.)

The ballots used in the Massachusetts State elections in other than a presidential year usually call for less than twenty selections to be made for national, State and county offices. These elective offices, apart from municipal offices, and their terms are: —

National.

	Term (Years).
United States Senator,	6
Representative in Congress,	2

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State.

	Term (Years).
Governor,	1
Lieutenant-Governor,	1
Secretary of State,	1
Treasurer and Receiver-General,	1
Auditor,	1
Attorney-General,	1
Executive Councillors,	1
Senator,	1
Representative,	1

County.

Commissioners,	3
Associate Commissioners,	3
Sheriff,	5
District Attorney,	3
Treasurer,	3
Register of Deeds,	5
Register of Probate and Insolvency,	5
Clerk of Court,	5

The Governor with the approval of the Council appoints all judicial officers, coroners, notaries public, and about three hundred and fifty members of nearly one hundred boards and commissions, as well as eighteen department heads.[1]

5. The Ballot in Other States.

There are no "short ballot" States, though several have taken important steps in the direction of shortening their ballots, as for example California, where the names of the State Railroad Commission, the State Printer and the Clerk of the Supreme Court have been removed from the ballot. Ohio has recently removed from the list of elected officials the Public Works Commissioner, the Superintendent of Public Instruction and the Dairy and Food Commissioner, and Iowa has ceased to elect the clerk of its Supreme Court.

The nearest approach to a "short ballot" State is now New Jersey, where but a single State executive officer is elected.

[1] For a list of these officials and boards see the *Manual for the Constitutional Convention*, p. 197 *seq.*

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But the ballot used in the two most important counties in New Jersey is distinctly a long ballot, as the members of the State Legislature from these counties are elected at large. The use of the "short ballot" as regards executive officials in that State has apparently resulted in establishing the Governor in a stronger position of leadership than is true in most other States. This is due to the fact that the other State officers are appointed by and directly responsible to the Governor.

6. Advocacy of the "Short Ballot" by Various Governors.

In 1915 an appeal for the "short ballot" was made in the messages of the Governors of Colorado, Idaho, Kansas, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Tennessee and Wisconsin.

The Governors' messages of 1917 contain many suggestions along the same line, notably those of Governors Borough of Arkansas, Keyes of New Hampshire, Hatfield of West Virginia, Bickette of North Carolina, Neville of Nebraska, Lowden of Illinois and Capper of Kansas. Governor Capper has recently had some of his suggestions adopted by the Kansas Legislature. Governor Norbeck of South Dakota argued against divided responsibility, saying: "People prefer to hold the Governor responsible for the proper conduct of the different departments of the State, though under our present form of government the Governor has not the slightest authority over any of them." Governor Philipps of Wisconsin urged the appointment of the Secretary of State, State Treasurer and Attorney-General as Governor's advisors. If appointed by the Governor they would necessarily be in political sympathy with him. Governor Goodrich of Indiana wished to have all the boards and commissions consolidated in a few departments properly related.

7. Reports of Commissions and Action taken by Various States.

Official studies of the subject have been made in recent years by commissions in thirteen States, namely, California, Colorado, Connecticut, Illinois, Iowa, Kansas, Minnesota, Nebraska, New Jersey, New York, Ohio, Oregon and Pennsylvania.

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The criticisms of the existing system and the proposals for shortening the ballot as made by a few of these Commissions may be summarized as follows: —

(*a*) *Illinois.*

The Illinois Commission found the evils of the long ballot to be duplication of positions and salaries, work poorly done, high cost of service due to inefficient methods and organization, lack of correlation and co-operation between officials, failure to get before the Legislature the facts essential to appropriations and legislation, and the failure to fix responsibility.

The Commission recommended a reduction of elective officers by statutory provision. It recommended that the following officers be removed from the elective list and made appointive, either by the Governor without restriction, or by the Governor from a list of eligible candidates certified by a State Civil Service Commission: Secretary of State, Auditor of Public Accounts, State Treasurer, State Superintendent of Public Instruction, Clerk of the Supreme Court (who should be appointed by the judges of that court), members of the State Board of Equalization, and Trustees of the University of Illinois.

The Legislature of 1917 amended the Administrative Code to take effect on July 1, 1917, by making a radical reconstruction of State offices. In so doing it followed a plan similar to that proposed by the Commission and also comparable to that presented to the New York Constitutional Convention in 1915.

This plan reorganizes and consolidates the officers, boards and commissions into a limited number of State departments. There are to be nine administrative departments of finance, agriculture, labor, mines and minerals, public works and buildings, public welfare, public health, trade and commerce, registration and education. This leaves the constitutional offices of Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Attorney-General, Superintendent of Public Instruction, and the Trustees of the State University and Board of Equalization (the two last mentioned are not established by the Constitution) to remain elective. There is to be a director at the

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head of each department who will have executive oversight of the bureaus or divisions, with administrative boards and unpaid advisory boards provided. All appointments are to be made by the Governor with the consent of the Senate and for a period of four years.

The results effected are a net reduction of about one hundred official positions, a centralization of purchasing, the creation of an executive budget, a more definite location of responsibility, a proper consolidation of functions and institutions, a more direct aid in securing consistent and effective legislation, and the prevention of additional and useless officials and boards.

The Legislature also adopted a resolution for a referendum calling a Constitutional Convention to be voted upon by the electorate in November, 1918. The purpose is to extend these changes to those offices which are established on an elective basis in the present Constitution.

(*b*) *Iowa.*

The Iowa Commission reports that "after careful consideration this Commission believes the present policy of creating a department and then leaving it practically without independent supervision, is unwise. We believe the State will receive better service if, instead of the present diffusion of powers and responsibilities, the various departments of the State's business activities be placed under the direct supervision of department heads to be appointed by the Governor and to serve subject to his wish, thus making the Governor the real administrative head of the State — the real source of authority and concomitant responsibility."

The commission proposes a reorganization into one group of general administative officers consisting of the Attorney-General, Secretary of State, Auditor (all to be elected), a Tax Commission, and Civil Service Commission (members of both to be appointive). The remaining State officers are grouped into six chief departments, — finance, public works and conservation, public welfare, education, labor and commerce and industry, and agriculture. At the head of each department is a director who is to be elected by the people in the case of one

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department only, — that of finance (treasurer), — and appointed by the Governor in the case of all the others.

(c) *Minnesota.*

The Minnesota Commission proposed in 1913 a plan of reorganization which would provide six departments which should comprise all of the boards, departments and commissions then existing or to be created in the future, — finance, public domain, public welfare, education, labor and commerce, and agriculture. Each department with the exception of finance was to be under a director to be appointed by the Governor. These recommendations have not been carried into effect.

(d) *Nebraska.*

The Nebraska legislative committee report of 1914 varies from those above in that it approaches the problem of reorganization from the legislative rather than from the executive side. It proposes a constitutional amendment to abolish the bicameral system and have a single small legislative body. Other States which have made this same proposal are South Dakota, Washington, Arizona, Kansas and Oregon. It argues in its report that the single chamber would attract the ablest men, concentrate responsibility for legislation, make for more conservative law-making, and have opportunity for a longer and more careful consideration of legislative proposals.

(e) *New York.*

The New York Bureau of Municipal Research in its report to the Convention of 1915 recommended that only the Governor, Lieutenant-Governor, Comptroller, and Attorney-General should be elected. It suggested the appointment of the heads of departments, — treasury, public works, agriculture and industry, health and safety, education, industrial relations, charities and corrections, public utilities, insurance and banking, civil service, and State militia. All new officers and bureaus, according to this plan, were to be assigned to one of these departments. The heads of these departments were to be appointed by the Governor without the consent of the Senate and were to hold

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office during the pleasure of the Governor. These eleven department heads were, moreover, to form the Governor's cabinet or council and might also add to their number the Secretary of State and the director of a central bureau of administration (if one should be created).

These recommendations were in the main adopted by the Convention. The departments, boards and commissions, 169 in number, were consolidated into seventeen civil departments, as follows: (1) law, (2) finance, (3) accounts, (4) treasury, (5) taxation, (6) state, (7) public works, (8) health, (9) agriculture, (10) charities and corrections, (11) banking, (12) insurance, (13) labor and industry, (14) education, (15) public utilities, (16) conservation, and (17) civil service.

Of the heads of these civil departments only the Attorney-General and the Comptroller remained elective. The appointment of all the others was vested in the Governor with the exception of the Department of Education, which was placed in charge of the University of the State of New York, the Regents of which are chosen by the Legislature. The principles upon which this reorganization was based were thus stated by the committee which reported on the subject to the Convention: —

> The Governor and other State officers whose powers and duties have been referred to your committee for consideration are provided for in Articles IV, V and VIII of the Constitution, and in a great number and variety of statutes. There were 152 departments, bureaus, boards and commissions which, on the first day of January, 1915, constituted the executive branch of the State government. In numerous instances these overlap in jurisdiction, and conflict in operation. This evil has been apparent to the public in the multiplicity of inspections and conflicting orders coming from unrelated and independent bureaus.
>
> Except in some specific matters, and to a partial extent, these agencies are independent of each other and not subject to the inspection, supervision or control of any superior authority, unless it be the Governor himself. It is manifestly impossible for the Governor personally to exercise direct supervision over such a multitude of agencies. They are, therefore, practically free from effective control. They cannot practically be held accountable for what they do, or fail to do. . . .
>
> The purpose of the committee has been to provide for a systematic plan of departmental organization; to simplify and co-ordinate the administrative machinery of the State; to subject every executive agency of

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the State government to practical accountability and to fix responsibility for the execution of the laws.

Your committee has conferred with the other committees having in charge related subjects and has sought to conform the article now reported to the several plans outlined in their reports.

The present Constitution, article IV, section 4, provides that the Governor "shall take care that the laws are faithfully executed." It is the opinion of your committee that the executive machinery placed at his disposal is not well suited to the purpose, and makes economy and efficiency in the administration of such laws practically impossible. . . .

The changes recommended in this report are not a criticism of any individual either in this or in previous administrations. The criticism is of the defective system under which our public servants have labored at great disadvantage to render public service. The machinery of government is built wrongly and no one under present conditions can make it work well. It is this condition to which President Taft referred when he told the committee that a study of the government of the State of New York aroused in him feelings "of profound admiration for the political adaptability of the people to make a machine work that nobody who had any real business sense would think would work under any conditions."

(*f*) *Oregon.*

Oregon has agitated a plan of reorganization since 1909. This plan proposes to abolish the Senate, to give the Governor a seat in the legislative body, to create an executive budget system with power to decrease items lodged in the Governor only, and to centralize the administrative departments in the hands of the Governor and a business manager. The question of the abolition of the Senate was submitted to the voters by referendum and defeated. The other provisions of the plan have been summarized as follows: —

The Oregon plan abandons the direct election of executive officers, with the exception of the Governor and Auditor. The Governor is authorized to appoint the principal department heads, Secretary of State, Treasurer, Attorney-General, State Printer, and Superintendent of Public Instruction, together with a new officer, called the State Business Manager, who is charged with the supervision of the rest of the administrative work of the State, except that of the Railroad Commission. The State Business Manager is clearly intended to be the most important administrative officer. These department heads are removable by the Governor at will and collectively form an executive council or cabinet. The Governor is expressly forbidden, however, to remove the State Business Manager or any subordinate administrative officer for partisan

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reasons. Thus the Governor becomes exclusively a political leader, and the conduct of the administration is vested for the most part in a responsible professional administrator and his subordinates. Politics is separated from administration, and by removing the purely administrative officers (except the Auditor) from the ballot, the number of elected officers is greatly reduced, without diminishing popular control over those who exercise political powers. In brief, the introduction of the short ballot is a leading feature of the matured Oregon plan.[1]

This plan as a whole has not been submitted to the people of Oregon. Various parts of it were submitted in 1910, 1912 and 1914, but in each case rejected.

(*g*) *Pennsylvania.*

A recent amendment to the Constitution of Pennsylvania has secured a greatly shortened ballot. The electorate is not hereafter to be called upon to vote for a huge number of local, State and national officers at one time. Each elector will have to mark his ballot only for Governor and Lieutenant-Governor and two other State officers, for a Representative in Congress, a State Senator and a Representative in the General Assembly from his own district. In the following year the election will be for local officers only.

8. Conclusion.

In practically all the States where the shortening of the ballot has been under serious consideration the number of elective officers is greatly in excess of the number in Massachusetts. In only two or three of these States, despite the cumbrousness of the ballots, has any substantial progress been made. The "short ballot" movement has had its success, for the most part, in the cities rather than in the States. The present Massachusetts ballot, while capable of being somewhat shortened if such action should be deemed advisable, is already one of the shortest and best in the country.

[1] Holcombe, A. N., *State Government in the United States*, p. 469.

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APPENDIX.

STATE AND COUNTY OFFICERS ELECTED, 1916.

[Presidential Electors, United States Senator, Congressmen and city and town officers excluded.]
(Numeral indicates length of term, in years.)

	Alabama.	Arizona.	Arkansas.	California.	Colorado.	Connecticut.	Delaware.	Florida.	Georgia.	Idaho.	Illinois.	Indiana.	Iowa.	Kansas.	Kentucky.	Louisiana.	Maine.	Maryland.	Massachusetts.	Michigan.	Minnesota.	Mississippi.	Missouri.	Montana.
Governor,	4	2	2	4	2	2	4	4	2	2	4	4	2	2	4	4	2	4	1	2	2	4	4	4
Lieutenant-Governor,	4	–	–	4	2	2	4	–	–	2	4	4	2	2	4	4	–	–	1	2	2	4	4	4
Councillor,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	1	–	–	–	–	–
Secretary of State,	4	2	2	4	2	2	–	4	2	2	4	2	2	2	4	4	–	–	1	2	2	4	4	4
Auditor,	4	2	2	–	2	–	2	–	–	2	4	2	2	2	4	4	–	–	1	2	4	4	4	4
Controller (Comptroller),	–	–	–	4	–	2	–	4	–	–	–	–	–	–	–	–	–	2	–	–	–	–	–	–
Treasurer,	4	2	2	4	2	2	2	4	2	2	2	2	2	2	4	4	–	–	1	2	2	4	4	4
Attorney-General,	4	2	2	4	2	2	4	4	2	2	4	2	2	2	4	4	–	4	1	2	2	4	4	4
Adjutant and Inspector-General,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Examiner and Inspector,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Superintendent of Public Instruction,	4	2	–	4	2	–	–	4	–	2	4	2	2	2	4	4	–	–	–	2	–	4	4	4
Commissioner of Public Lands and Buildings,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	2	–	4	–	–
Commissioner of Agriculture and Industries,	4	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Commissioner of Labor and Statistics,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–
Commissioner of Charities and Corrections,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Board of Equalization,	–	–	–	4	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–

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STATE AND COUNTY OFFICERS ELECTED, 1916 — *Continued.*

	Alabama.	Arizona.	Arkansas.	California.	Colorado.	Connecticut.	Delaware.	Florida.	Georgia.	Idaho.	Illinois.	Indiana.	Iowa.	Kansas.	Kentucky.	Louisiana.	Maine.	Maryland.	Massachusetts.	Michigan.	Minnesota.	Mississippi.	Missouri.	Montana.
Trustees or Regents of State University,	–	–	–	–	2	–	–	–	–	–	6	–	–	–	–	–	–	–	–	8	–	–	–	–
Surveyor-General (Engineer),	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Solicitor-General,	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Register of Land Office (Commissioner),	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–
Insurance Commissioner,	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–	–
Chief of Bureau of Statistics,	–	–	–	–	–	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–
State Geologist,	–	–	–	–	–	–	–	–	–	–	–	2	4	–	–	–	–	–	–	–	–	–	–	–
Railroad Commissioners,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	4	–	–
Chief Mine Inspector,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
State Printer,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Board of Education,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	6	–	–	–	–
State Senate,	4	2	4	4	4	2	4	4	2	2	4	4	4	4	4	4	2	4	1	2	4	4	4	4
House of Representatives (Assembly),	4	2	2	2	2	2	2	2	2	2	2	2	2	2	2	4	2	2	1	2	2	4	2	2
Supreme Court,	6	6	8	12	10	–	–	6	6	6	9	6	6	6	8	12	–	15	–	8	6	–	10	6
Court of Appeals,	–	–	–	12	–	–	–	–	–	–	–	6	–	–	–	–	–	15	–	–	–	–	12	–
Circuit Court (District),	6	–	4	–	6	–	–	–	–	4	6	6	4	4	5	4	–	15	–	6	6	–	6	4
Superior Court,	–	4	–	6	–	–	–	–	–	4	6	–	–	–	–	–	–	–	–	–	–	–	–	–
County Court,	–	–	–	–	–	–	–	4	–	–	4	–	–	–	4	–	–	–	–	–	–	–	2	–
Probate Court,	6	2	–	–	–	–	–	–	–	–	4	–	–	2	–	–	4	2	–	4	2	–	4	–
Court of Ordinary,	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Fiscal Court,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–

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STATE AND COUNTY OFFICERS ELECTED, 1916 — *Continued.*

	Alabama.	Arizona.	Arkansas.	California.	Colorado.	Connecticut.	Delaware.	Florida.	Georgia.	Idaho.	Illinois.	Indiana.	Iowa.	Kansas.	Kentucky.	Louisiana.	Maine.	Maryland.	Massachusetts.	Michigan.	Minnesota.	Mississippi.	Missouri.	Montana.
County Comptroller,	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	3	2	2	–	4	2
County Treasurer,	4	2	2	4	2	–	2	2	2	2	4	2	–	2	–	–	2	–	–	2	2	4	4	2
County Recorder,	–	2	–	4	–	–	4	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–
County Auditor,	4	–	–	4	–	–	–	–	2	–	4	2	2	2	–	–	–	–	–	2	2	–	4	–
County Assessors,	4	2	2	4	2	–	2	2	2	2	–	2	–	2	4	4	–	2	–	–	–	4	4	2
County Inspector,	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
County Surveyor,	4	2	2	4	2	–	–	4	–	2	4	2	2	2	4	4	–	2	–	2	2	4	4	2
County Road Commissioner,	–	2	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
County Superintendent of Education,	4	2	–	4	2	–	–	4	–	2	4	–	2	–	4	–	–	–	–	–	2	–	4	2
County Board of Education (Instruction),	–	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–
County License Collector,	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
County Tax Collector (Revenue),	–	–	–	4	–	–	2	2	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–
County Live Stock Inspector,	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
County Fish and Game Warden,	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
County Overseer of the Poor,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Coroner,	4	2	2	4	2	–	2	–	2	2	4	2	2	2	4	4	2	–	–	2	2	4	4	2
Jailer,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–

NOTE. — Michigan elects Supreme Court Justice, Regents of the University, Circuit Court Judge, and Commissioner of Schools in April, all others in November.

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STATE AND COUNTY OFFICERS ELECTED, 1916 — *Continued.*

	Nebraska.	Nevada.	New Hampshire.	New Jersey.	New Mexico.	New York.	North Carolina.	North Dakota.	Ohio.	Oklahoma.	Oregon.	Pennsylvania.	Rhode Island.	South Carolina.	South Dakota.	Tennessee.	Texas.	Utah.	Vermont.	Virginia.	Washington.	West Virginia.	Wisconsin.	Wyoming.
Governor,	2	4	2	3	2	2	4	2	2	4	4	4	2	2	2	2	2	4	2	4	4	4	2	4
Lieutenant-Governor,	2	4	2	1	2	2	4	2	2	4	—	4	2	2	2	1	1	1	2	4	4	1	2	—
Councillor,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	1	1	1	1	1
Secretary of State,	2	4	1	1	2	2	4	2	2	4	4	—	2	2	2	1	1	4	2	4	4	4	2	4
Auditor,	2	1	1	1	2	1	4	2	1	4	1	4	1	1	2	1	2	4	2	1	4	1	1	4
Controller (Comptroller),	1	4	1	1	1	2	1	1	1	1	1	1	1	1	1	1	2	1	2	1	1	1	1	1
Treasurer,	2	4	1	1	2	2	4	2	2	4	4	4	2	2	2	1	2	4	2	4	4	1	2	4
Attorney-General,	2	4	1	1	2	2	4	2	2	4	4	1	2	2	2	1	2	4	1	4	4	1	2	1
Adjutant and Inspector-General,	1	1	1	1	1	1	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1	1
Examiner and Inspector,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Superintendent of Public Instruction,	2	1	1	1	2	1	4	2	1	4	1	1	1	2	2	1	2	4	1	4	4	4	4	4
Commissioner of Public Lands and Buildings,	2	1	1	1	2	1	1	1	1	1	1	1	1	1	2	1	1	1	1	1	4	1	1	1
Commissioner of Agriculture and Industries,	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	2	1	1	4	1	1	1	1
Commissioner of Labor and Statistics,	1	1	1	1	1	1	1	1	1	4	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Commissioner of Charities and Corrections,	1	1	1	1	1	1	1	1	1	4	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Board of Equalization,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Trustees or Regents of State University,	6	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Surveyor-General (Engineer),	1	4	1	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Solicitor-General,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1
Register of Land Office (Commissioner),	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Insurance Commissioner,	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Chief of Bureau of Statistics,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

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State and County Officers elected, 1916 — *Concluded.*

	Nebraska.	Nevada.	New Hampshire.	New Jersey.	New Mexico.	New York.	North Carolina.	North Dakota.	Ohio.	Oklahoma.	Oregon.	Pennsylvania.	Rhode Island.	South Carolina.	South Dakota.	Tennessee.	Texas.	Utah.	Vermont.	Virginia.	Washington.	West Virginia.	Wisconsin.	Wyoming.
County Inspector,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
County Surveyor,	2	4	1	1	2	1	2	1	2	4	2	4	1	1	2	1	2	2	1	4	4	4	2	2
County Road Commissioner,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
County Superintendent of Education,	2	4	1	1	2	1	1	1	1	4	1	1	1	4	2	1	2	1	1	1	4	1	2	2
County Board of Education (Instruction),	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	4	1	1	1	1	1	1
County License Collector,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
County Tax Collector (Revenue),	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	4	1	1	1	1
County Live Stock Inspector,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
County Fish and Game Warden,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
County Overseer of the Poor,	1	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1	1	4	1	1	1	1
Coroner,	1	1	1	3	1	3	2	1	2	1	2	4	1	4	2	1	1	1	1	1	4	1	2	2
Jailer,	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

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BULLETIN No. 11

MUNICIPAL HOME RULE

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	Nebraska.	Nevada.	New Hampshire.	New Jersey.	New Mexico.	New York.	North Carolina.	North Dakota.	Ohio.	Oklahoma.	Oregon.	Pennsylvania.	Rhode Island.	South Carolina.	South Dakota.	Tennessee.	Texas.	Utah.	Vermont.	Virginia.	Washington.	West Virginia.	Wisconsin.	Wyoming.
State Geologist,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Railroad Commissioners,	–	–	–	–	–	–	–	2	–	–	–	–	–	–	–	–	6	–	–	–	–	–	–	–
Chief Mine Inspector,	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–	–
State Printer,	–	–	–	–	–	–	–	–	–	–	4	–	–	–	–	–	–	–	–	–	–	–	–	–
Board of Education,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
State Senate,	2	4	2	3	4	2	2	4	2	4	4	4	2	4	2	2	4	4	2	4	4	4	4	4
House of Representatives (Assembly),	2	2	2	1	2	1	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Supreme Court,	6	6	–	–	8	14	8	6	6	6	6	21	–	–	6	8	6	6	–	–	6	12	10	8
Court of Appeals,	–	–	–	–	–	14	–	–	–	–	–	–	–	–	–	–	6	–	–	–	–	–	–	–
Circuit Court (District),	4	4	–	–	6	–	–	4	6	4	6	10	–	–	4	8	4	4	–	–	–	8	6	6
Superior Court,	–	–	–	–	–	–	–	–	–	–	–	10	–	–	–	–	–	–	–	–	4	–	–	–
County Court,	2	–	–	–	–	6	–	2	–	–	4	6	–	–	2	4	2	–	2	–	–	–	–	–
Probate Court,	–	–	–	–	2	–	–	–	4	–	–	–	–	4	–	–	–	–	2	–	–	–	2	–
Court of Ordinary,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Fiscal Court,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Criminal Court,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Surrogate Court,	–	–	–	–	–	6	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Associate Judges (County Court),	–	–	–	–	–	–	–	–	–	–	–	6	–	–	–	–	–	–	–	–	–	–	–	–
Chancellors,	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–

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MUNICIPAL HOME RULE.

I. The Meaning of Home Rule.

The term "municipal home rule" refers to the general delegation of the power of self government to cities by provisions of the State constitution, and especially to the delegation of authority to municipalities to frame and adopt their own charters. Broadly speaking, municipal home rule might also be regarded as including such powers of self government as are granted by statute, but inasmuch as rights conferred by statute have not always secured the necessary freedom of cities to act in their own affairs without interference, the term has been confined to those powers vested in municipalities by constitutional provisions alone. Such constitutional provisions give to municipal corporations rights that may be defended against legislative encroachment just as may the rights of private corporations. It should be made clear, however, that municipal home rule does not involve divorcing the city from the State any more than private corporations are removed from State control when they are incorporated with special powers. Home-rule cities, although possessing the right to frame their own charters, still remain subject to the Constitution and to State laws covering matters of State concern.

Following is a statement of the development of the home-rule problem in American cities and an analysis of the chief constitutional provisions in the twelve States which have adopted home rule.

II. Development of the Home-Rule Problem.

In the early part of the nineteenth century State Legislatures did not concern themselves with the affairs of cities. It was only after municipalities had grown and their activities had become important that this policy was changed. With the growth of population, the development of transportation facilities, ease

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of communication and the widening of local into general interests, Legislatures were prompted to act where cities had acted before with the result that after the middle of the last century city charters became subject to all manner of alterations, and the affairs of large cities, especially, were made objects of legislative attention.

Scope of Legislative Power over Cities.

As to the basis of legislative power over municipalities, there are two conflicting views. The courts of some States have announced the so-called doctrine of an "inherent right of self government" on the part of cities regardless of any express statutory or constitutional provisions. Judge Cooley formulated this principle in a famous Michigan case in 1871, but it has been applied in only a few cases and then with limitations.[1] The view which has prevailed is that of "complete legislative supremacy," which holds that the city is a municipal corporation created by the State and deriving all its powers from the State.[2] Since this is the established rule both of law and of practice the only restrictions upon legislative action are to be found in constitutional limitations.

The earlier State constitutions contained very few restrictions upon the Legislature of any nature whatsoever, and in many States there were no provisions at all limiting the power of the Legislature in dealing with municipal corporations. By the middle of the nineteenth century, however, the disposition to insert checks upon legislative interference with local administration had become so marked that whenever State constitutions were revised or new ones adopted such provisions were invariably included and during the last half century this tendency has grown even stronger.

Constitutional Limitations upon Special Legislation for Cities.

The most widely adopted constitutional provisions limiting the powers of the Legislature in dealing with municipalities are those forbidding the Legislature to charter cities by special law or to enact special legislation for individual cities. As

[1] People ex rel. Le Roy v. Hurlbut (1871), 24 Mich. 44.
[2] Meriwether v. Garrett (1880), 102 U. S. 472.

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early as 1845 and 1846 Louisiana and New York incorporated provisions in their constitutions prohibiting special legislation for private corporations. It remained, however, for Ohio in 1851 to extend this prohibition to include municipal corporations, the Constitution of 1851 providing that the State Legislature should pass no special acts conferring corporate powers, but should arrange for the organization of cities by general laws and should give to all laws of a general nature uniform operation throughout the State.[1]

Following Ohio, and especially during the period since 1870, other States have adopted constitutional provisions against special legislation for cities, until to-day the constitutions of twenty-nine States either absolutely prohibit all special acts relating to cities and require that municipalities shall be incorporated by general laws or have been construed by the courts to include such a requirement.[2] Three more State constitutions prohibit special legislation for the smaller cities of the State;[3] while three others, although not specifically prohibiting special legislation, impose certain restrictions upon the Legislature in passing such acts.[4]

Results under Constitutional Limitations on Special Legislation and the Movement to remove Cities from Legislative Interference.

The experience of the States whose constitutions prohibit special legislation for cities and require municipalities to be regulated by general laws has shown, however, that special charters and laws continue to be enacted despite such restrictions. This has been accomplished by such devices as classifying cities or by the enactment of general laws which by reason of their subject matter can be applied only to the particular

[1] *Constitution of Ohio, 1851*, Art. XIII, 1, 6; Art. II, 26.

[2] These constitutions are as follows: Alabama, IV, 104; Arkansas, XII, 2, 3; Arizona, IV, div. 2, 19; XIII, 1; California, XI, 6; Colorado, XIV, 13, 14; Illinois, XI, 1; IV, 22; Indiana, XI, 13; IV, 23; Iowa, III, 30; Idaho, III, 19; XII, 1; Kansas, XII, 1, 5; Kentucky, 59, 156, 160, 166; Michigan, VIII, 20; Minnesota, IV, 33; Mississippi, IV, 88; Missouri, IV, 53; IX, 7; New Jersey, IV, sec. VII, 11; Nebraska, III, 15; North Dakota, II, 69; VI, 130; New Mexico, IV, 24; Oregon, XI, 2; Oklahoma, V, 46; XVIII, 1, 2; Ohio, XVIII, 2; Pennsylvania, III, 7; South Carolina, III, 34; VIII, 1, 2; South Dakota, III, 23; X, 1; Utah, VI, 26; XI, 5; Washington, II, 28; XI, 10; Wisconsin, IV, 31; Wyoming, III, 27; XIII, 1.

[3] West Virginia, VI, 39; Texas, XI, 5; Louisiana, 48.

[4] Georgia, III, sect. 7, par. 16; New York, XII, 2; Virginia, IV, 51; VIII, 117.

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city intended. The evasion of constitutional restrictions against special legislation has been due to two reasons: first, the tendency of the Legislature in some States to interfere with local affairs for various motives, and secondly to the fact that cities themselves have found it difficult to operate under general municipal codes which apply to all cities in the State alike.

As a result of this experience three methods have been worked out for providing cities with forms of government which are more fitted to their individual needs than the general charter system and which will also give them greater freedom of action than the system of special legislative charters. These three methods are: (1) the New York and Illinois plans of limiting special legislation; (2) the home-rule charter system; and (3) the optional charter plan, the first two of which have been established by constitution and the latter merely by legislation.

New York and Illinois Plans for limiting Special Legislation.

The States of New York and Illinois have endeavored to remove cities from legislative interference but have at the same time recognized the advisability of permitting some degree of flexibility in the powers and organization of individual cities. With this end in view provisions have been included in the constitutions of these three States allowing special legislation for municipalities under certain restrictions.

The New York Constitution of 1894 divides cities into three classes and the Legislature is permitted to pass laws applying to all of the cities in any one of these classes without consulting the local authorities. Legislation applying to a single city may also be enacted, but in such cases the city concerned must be consulted. When any measure applying to a single municipality has passed both branches of the Legislature it must be submitted to the mayor of the city concerned in the case of the larger places,[1] or to the mayor and council in the smaller municipalities, who must return it to the Legislature within fifteen days with a declaration that it is or is not acceptable to the local authorities. If it is acceptable the act goes directly to the

[1] Submitted to the mayor in New York, Buffalo and Rochester.

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Governor for his consideration as in the case of other bills; if it is not accepted by the city it must be passed again by the Legislature and approved by the Governor before it may go into effect.[1] Provision is thus made in the New York Constitution for the enactment of special legislation subject to a suspensive veto by the municipality.

The Constitution of Illinois by an amendment adopted in 1904 permits special legislation for the city of Chicago provided that a majority of the electors of the city voting at a special or general election are in favor of such legislation.[2] Under this arrangement the city of Chicago may not always be able to obtain desired charter amendments or special powers, but it is in a position to reject any law of special applicability which a majority of its voters regard as being against the interests of the municipality.

III. The Home-Rule Movement.

Of the various methods for giving cities limited powers of self-government and for permitting flexibility in organization, the most far-reaching is the so-called home-rule system which gives cities the constitutional right to draft, adopt and amend their own charters. Missouri in 1875 was the first State to adopt this plan, the Constitution of that State granting to all cities of more than 100,000 people the privilege of framing their own charters. In 1879 California introduced a home-rule clause in her Constitution, Washington took a similar step in 1889 and Minnesota in 1896. The movement slackened somewhat until 1902, when Colorado joined the list. Then came Oregon, Oklahoma and Michigan in 1906, 1907 and 1908, respectively, while the last four States — Arizona, Nebraska, Ohio and Texas — were added in 1912, making in all twelve home-rule States.[3]

---

[1] *Constitution of New York*, Art. XII, sect. 2.

[2] *Constitution of Illinois*, Art. IV, sect. 34.

[3] References to constitutional provisions and to the most important statutes enacted to carry out the same: (1) Arizona, XIII, 1–6; (2) California, XI, 6, 7, 7½, 8, 8½; (3) Colorado, XX, 1, 4, 5, 6; (4) Michigan, VIII, 20, 21; procedure prescribed entirely by law, *Laws of 1909*, No. 279; (5) Minnesota, IV, 36; *Laws of 1899*, Chap. 251; *1901*, Chaps. 129, 323; *1903*, Chap. 238; (6) Missouri, IX, 16–17, 20–25; (7) Nebraska, XIa, 2–4; (8) Ohio, XVIII, 3, 7, 8, 9; (9) Oklahoma, XVIII, 3a, 3b; (10) Oregon, XI, 2; procedure not prescribed but provisions of initiative and referendum have been held to apply; (11) Texas, XI, 5; procedure prescribed entirely by law, *Laws of 1913*, Chap. 147; (12) Washington, XI, 10; also *Laws of 1890*, pp. 215 *ff.*

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Although no State has adopted a comprehensive system since 1912, home-rule amendments have been agitated during the last few years in several States, including Illinois, Kansas, New Jersey, Pennsylvania and Wisconsin, while the New York Constitutional Convention in 1915 included a provision on this subject which was rejected when the Constitution as a whole was defeated at the polls.[1] It should also be noted that the people of Maryland ratified a constitutional amendment in 1915 giving some measure of home rule to Baltimore, the largest city in the commonwealth.[2] Laws have also been passed in Connecticut and Florida conferring a considerable degree of home rule upon cities, the Connecticut statute providing that any town, borough or city shall have authority to draft a charter for its government or to amend its present charter under the conditions prescribed in the act.[3] Grants which are revocable at any time, however, and which give only limited powers are hardly to be considered in the same category as constitutional provisions. This report includes, therefore, only the twelve States which have provided for home rule in their fundamental law.

Following is an analysis of the chief features of the home-rule provisions of the various State constitutions.

Nature of Power granted to Cities to frame their Own Charters.

The power that is usually granted to cities under home-rule provisions of the Constitution is the general grant of power to frame and adopt their own charters provided that such charters are consistent with and subject to the Constitution and laws of the State. In Texas a charter must not only be consistent with the Constitution and general laws of the State but must also be subject to such limitations as may be prescribed by the Legislature. The Minnesota Constitution also gives the Legislature considerable control over the manner in which home rule powers may be exercised by including a provision which requires that before a city may incorporate the Legislature shall prescribe by law the general limits under which the charter may be

[1] *Proposed Constitution of New York, 1915*, Art. XV, 3, 4.
[2] *Constitution of Maryland*, Art. XI, A.
[3] *Laws of Connecticut, 1915*, Chap. 319; *Laws of Florida, 1915*, Chap. 6900.

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framed. Thus it is seen that in all of the home-rule States it is either expressly or impliedly required that a charter must be in conformance with the State Constitution, and in all but Colorado and Oregon, with the general laws of the State as well, while in a few such as Michigan, Minnesota and Texas, the Legislature must act before cities may exercise the power conferred upon them by the Constitution.

As noted above, the Colorado Constitution is the only one besides Oregon which does not specifically provide that a home-rule charter shall be consistent with State laws. As amended in 1912 the Constitution provides that the people of each city or town are "hereby vested with and shall always have power to make, amend, add to or to replace the charter of said city or town, which shall be its organic law and extend to all its local and municipal matters." The Constitution also enumerates in considerable detail the powers that may be exercised by home-rule cities, and states that the intention of the provision is to grant to all such municipalities the full right of self-government in both local and municipal matters.[1] So far as the letter of the Constitution is concerned, cities in Colorado are given larger powers of home rule than in those States where this right is conferred merely by a general grant of power, but inasmuch as the amendment of 1912 has not been fully interpreted by the courts it is difficult to state what will be its actual scope in the future. The Oregon Constitution does not require the charter to be in conformance with the "general laws" of the State, but merely provides that it shall be subject to the Constitution and to the criminal laws of the commonwealth and also to the local option laws.[2]

Cities to which Home Rule applies.[3]

Of the dozen States that have provided for home rule, only four — Ohio, Oregon, Michigan and Minnesota — extend to all municipalities the privilege of drawing up their own charters.

[1] *Constitution of Colorado*, XX, 6 (Amendment of 1912).

[2] *Constitution of Oregon*, XI, 2.

[3] Cities which may come under home-rule provisions: Ohio, Oregon and Michigan — any city or town; Minnesota — any city; Colorado — county and city of Denver and any city over 2,000; Oklahoma — any city over 2,000; Arizona — any city over 3,500; California — any city or consolidated city and county over 3,500, also any county; Nebraska — any city over 5,000; Washington — any city over 20,000; Missouri — any city over 100,000.

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The remaining States restrict the right to cities and towns with a population ranging from 2,000 in Colorado and Oklahoma to cities of more than 20,000 in Washington and more than 100,000 in Missouri. The California Constitution grants home rule not only to cities and to consolidated cities and counties but also to any independent county, while in Colorado special home-rule privileges are conferred upon the consolidated city and county of Denver.[1] In the Constitution of Missouri there is also a special provision applying to St. Louis, the largest city in the State.[2]

In this connection it should also be made clear that the special powers of self-government granted to cities through home-rule provisions of the Constitution apply only to such cities as see fit to draw up or amend their existing charters in pursuance of such provisions. All other cities remain under the general municipal code of the State or under special legislative charters.[3] In all but three of the States under consideration the only way in which a city may come under the home-rule provision of the Constitution is by the adoption of an entirely new charter. Michigan, Oregon and Texas, however, are exceptions to this rule and permit cities to amend their existing legislative charters under the home-rule provision without undertaking a complete charter revision.

Procedure in Charter Making under Home-Rule Provisions.

Board of Freeholders, Method of Selection. — In all of the home-rule States except Oregon, the drafting of a charter is entrusted to a body of citizens usually designated as a "board of freeholders" or "charter commission," the members of which are popularly elected in all of the States except Minnesota. The number of members is usually fixed in the Constitution, varying from 13 in Missouri to 21 in Colorado, while in Oklahoma 2 are elected from each ward. The term of office expires when the charter has been drafted, except in Minnesota, where the board is a permanent one whose members may serve

[1] *Constitution of Colorado*, XX, 1-5.

[2] *Constitution of Missouri*, IX, 20-25.

[3] The Ohio Constitution would seem to confer upon all cities in the State certain powers of local self-government, but the courts have interpreted that such powers are granted only to cities which adopt home-rule charters. City of Toledo v. Lynch (1913), 88 Ohio State, 71.

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for such period as the Legislature may determine, but not to exceed six years.[1]

In most States the election of the board of freeholders or charter commission is called by the city council or other legislative authority of the municipality either upon its own initiative or upon a petition signed by a certain proportion of the voters. In seven of the States, including Arizona, California, Michigan, Ohio, Oklahoma, Texas and Washington, the city council *may* by ordinance call such an election, while the summoning of an election is made *compulsory* whenever a petition is submitted signed by from 5 to 25 per cent of the qualified voters.[2] In Missouri the sole authority for calling an election of a charter commission is the city council, no provision being made for the popular initiation of the question.

Thus it is seen that in eight of the States the machinery for drafting a home-rule charter is placed directly in operation by calling an election of a board of freeholders. In three of these eight States — Arizona, Oklahoma and Ohio — a vote is taken separately at the election of the board of freeholders on the question as to whether proceedings shall be taken toward framing a charter and on the selection of members. If the first question does not receive a majority vote no further proceedings are taken, of course, toward drawing up a charter.

In the four States of Colorado, Nebraska, Oregon and Minnesota, however, the procedure is somewhat different from that described above. In Colorado and Nebraska the Constitution provides that instead of voting directly at the same election on the question of framing a charter and for the election of members of a charter commission, a preliminary vote shall be taken first at a general or special election as to whether or not a charter convention shall be called, and if such a convention is favored by a majority of those voting thereon the council is

[1] In Arizona, California, Colorado, Missouri, Nebraska, Ohio and Oklahoma the procedure for drawing up a charter is prescribed in the Constitution. In Minnesota the constitutional provision prescribes most of the details but leaves to the Legislature the duty of prescribing by law the general limits within which a charter shall be framed. The Constitution of Washington provides only for the initiation of a charter election by the council; popular initiative has been provided by statute. The Constitutions of Michigan and Texas are completely silent as to the procedure for initiating a charter proposal and these matters have been provided for entirely by statute.

[2] For percentage of voters necessary for petition, see Appendix, pp. 446–448. Percentage of signatures is usually based on the total vote cast at the preceding municipal or gubernatorial election.

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then required to call a special election at a later date to choose members to the same.[1] Minnesota follows a still different plan. In that State the board of freeholders is not elected by the people but appointed by the judge of the district court either upon his own initiative or upon a petition signed by 10 per cent of the legal voters.

The Oregon Constitution does not prescribe the procedure to be followed in drafting a home-rule charter, but the initiative and referendum provisions of the Constitution have been held to extend to the making of charters and amendments. Under these provisions an Oregon municipality may have its charter drawn up either by the council or by the people through an initiative petition and then submitted directly to the voters, thus dispensing with a special drafting body.[2]

Duties of Board of Freeholders; Publicity of Charter. — Most of the State constitutions prescribe the time within which the board of freeholders must prepare and propose a charter, which varies from sixty days after election in Colorado to one year in Ohio.[3] Provisions are also included as a general rule requiring that the charter shall be signed by a majority of the members of the board and returned to the chief executive officer of the city or to the city clerk or clerk of the city council. In several States, such as Arizona and Oklahoma, a duplicate copy properly signed must be sent to the county recorder or registrar of deeds.

The constitutions of half of the home-rule States provide that copies of the charter shall be published in the local newspapers for a specified number of times before it is voted upon.[4] The Ohio and California Constitutions, however, go much farther in requiring publicity for the proposed charter and provide that the election clerk for the municipality shall mail a copy to each registered voter.

Ratification and Approval of Charter. — In each of the twelve States the proposed charter must be submitted to a referendum

[1] *Constitution of Colorado*, XX, 5.

[2] Howard Lee McBain, *The Law and Practice of Municipal Home Rule* (New York, 1916), pp. 594–596. See also Oregon Constitution, Art. IV, sect. 1a.

[3] Time within which the charter commission must prepare and propose charter: Colorado, 60 days after election; Arizona, Oklahoma and Missouri, 90 days after election; California, 120 days; Nebraska, 4 months; Minnesota, 6 months; Ohio, 1 year.

[4] Arizona, California, Colorado, Nebraska, Oklahoma, Washington.

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vote of the qualified electors at a general election if one is held within a certain length of time after completion of the document, or at a special election if a general election is not held within the specified period.[1] The common method is to provide that the election shall be held within thirty to sixty days after the publication of the charter with the proviso in several States that at least twenty, thirty or sixty days must elapse before the charter may be submitted so as to give ample time for its consideration by the voters. In Ohio, however, the time for submitting the charter is left to the charter commission but must be within one year from the date of the election of the commission.

As a general rule a mere majority of the qualified electors voting on the charter itself is sufficient for ratification.[2] In Missouri and Minnesota, however, a four-sevenths majority of the qualified electors voting at the election is required.[3]

Approval by State Authorities. — Under the Constitutions of eight of the States — Colorado, Minnesota, Missouri, Nebraska, Ohio, Oregon, Texas and Washington — the charter goes into effect within a certain period of time after ratification without approval by any higher authority. In Arizona and Oklahoma, however, the Constitution requires that the charter after acceptance by the voters must be submitted to the Governor for his approval, but the Governor must approve the same unless it is in conflict with the Constitution or laws of the State.[4] In Michigan on the other hand the statute which has been passed regulating home rule procedure provides that the charter shall be presented to the Governor prior to its submission at the polls instead of after ratification by the voters as in the other two States, and the local charter commission is given the power to override the Governor's veto by a two-thirds vote.[5] Under the California Constitution, the charter when ratified by the voters is submitted, not to the Governor, but to

[1] In Oregon council may draw up and adopt charter itself without referring same to voters provided referendum is not demanded.

[2] Arizona, California, Colorado, Nebraska, Ohio and Oklahoma Constitutions require majority voting on the charter.

[3] In Missouri ratification of charter for St. Louis requires only majority of qualified electors voting at election. Missouri, IX, 20, 22, St. Louis.

[4] *Constitution of Arizona*, XIII, 2; *Constitution of Oklahoma*, XVIII, 3a.

[5] *Public Acts of Michigan, 1909*, No. 279.

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the State Legislature for approval, with the limitation that the Legislature may not alter or amend the charter but must accept or reject it as a whole.[1] The Legislature in California has never failed to ratify a charter or amendment submitted to it for approval, although in a few instances a vigorous fight for rejection has been made. The joint resolutions by which these charters and amendments receive legislative sanction and validity have become in most instances little more than a formality.[2] In Oklahoma also there has been no exercise of the veto power of the Governor.[3]

In submitting a charter or amendment in California, Colorado, Minnesota, Missouri, Nebraska and Washington, any alternative article or section may be presented and voted on without prejudice to the other provisions. If the alternative provisions receive a larger vote they supersede the main sections and become law.

The Constitutions of Colorado and Nebraska provide that if the proposed charter is rejected at the polls another charter convention shall be called to frame a new charter which shall be published and submitted in the same manner as the first. In case the charter is again rejected the process is repeated until a charter is finally approved by the voters. This provision for subsequent charters appears to relate only to the first charter that is drawn up by the city in Colorado, but in Nebraska it applies to any charter, whether it be the first one or a subsequent document or revision.[4]

When the charter has been ratified and finally approved by the voters or by the State authorities, provision is usually made that copies of the same shall be signed by the mayor, city clerk or some other municipal authority, and must then be authenticated by the corporate seal and filed with the Secretary of State and placed in the archives of the municipality. In Arizona, California, Minnesota, Missouri and Oklahoma the Constitution requires that all courts shall take judicial notice of the charter after copies have been authenticated and filed in the manner described above.

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[1] *Constitution of California*, XI, 7½; county, XI, 8.
[2] McBain, p. 219. See also Harrison v. Roberts (1904), 145 Cal. 173.
[3] *Ibid.*, p. 561.
[4] *Constitution of Colorado*, XX, 4; Nebraska, XIa, 3.

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Charter Amendments and Revision. — The procedure for amending a home-rule charter is similar to the method of initiating an entirely new charter. In all of the States except Colorado, Missouri and Minnesota the Constitution or the laws that have been passed in pursuance of constitutional provisions stipulate that amendments to a charter may be proposed either by the city council or by petition of a certain percentage of the voters varying from 5 per cent in Nebraska to 25 per cent in Arizona and Oklahoma.[1] In Colorado the sole method of initiating amendments is upon petition of either 5 or 10 per cent of the voters;[2] while in Missouri there is no provision for the popular initiation of amendments and changes may be proposed only by the city council. In Minnesota amendments are suggested either by the permanent board of freeholders upon their own initiative or by a petition signed by 5 per cent of the voters. Oregon makes no provision for the procedure of amendment but it has been held that the initiative and referendum laws are applicable in such cases.

The majority required for the ratification of an amendment is in most States the same as that for the ratification of a complete charter, except that in Missouri and Minnesota a three-fifths majority of those voting at the election is required for an amendment instead of a four-sevenths majority as required for a complete charter. In those States where the approval of the Governor or Legislature must be obtained for a new charter similar approval must be had in the case of amendments. In Michigan it is provided by statute that the city council may override the Governor's veto of an amendment by a two-thirds vote.

Contents of Charter Provisions. — The constitutions of several of the home-rule States contain mandatory provisions as to the contents of city charters, some of which are of a positive nature, requiring the charter commission to include certain enumerated provisions in the charter, others of which are in the nature of negative restrictions and prohibit the framers of the charter from inserting clauses on specified subjects.

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[1] For percentage required on petitions, see Appendix, pp. 446–448.

[2] In Colorado, if petition for charter amendment is signed by 5 per cent of the electors voting at the last preceding gubernatorial election, the question is submitted at a general election; upon petition of 10 per cent of such voters it is submitted at a special election.

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Among the mandatory provisions which must be included in a home-rule charter the most common requirement is that the document must arrange for certain essential features of municipal organization. In Missouri, for example, the charter shall provide for a mayor or chief executive and for a bicameral council, one branch of which shall be elected at large.[1] In Minnesota the charter must also provide for a mayor or chief magistrate and a council of either one or two houses. If the council is bicameral at least one branch must be elected at large.[2]

In Michigan the home-rule act of 1909, which was enacted in pursuance of the Constitution of 1908, requires that the charter provide for a mayor, a legislative body, a clerk, treasurer, etc. The document must also contain regulations for the conduct of elections, and for a system of accounts which shall conform to any uniform system required by law. The objects of municipal taxation must be the same as for State and county purposes under the general law, and the tax rate must not exceed 2 per cent of the assessed valuation nor the indebtedness more than 8 per cent of the assessed valuation. The city is also prohibited from issuing bonds unless approved by three-fifths of the voters and unless a sinking fund be provided.[3]

The Colorado Constitution requires that the charter for the city and county of Denver shall designate officers who shall perform the duties of county officials, and shall provide that the departments of fire and police and of public utilities and works shall be under civil service regulations, etc. In addition to this requirement which applies to Denver alone, the Colorado Constitution makes it mandatory upon the framers of a charter in any city to provide for the initiative and referendum on municipal ordinances, and prohibits a charter from diminishing the tax rate for State purposes as fixed by the Legislature or from interfering in any way with the collection of State taxes.[4] The Constitution of Nebraska contains a similar prohibition, restricting the charter provisions from interfering with the

[1] *Constitution of Missouri*, IX, 17, 22. St. Louis charter may provide for a single chamber council.

[2] *Constitution of Minnesota*, IV, 36.

[3] *Public Acts of Michigan, 1909*, No. 279.

[4] *Constitution of Colorado*, XX, 2–5.

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collection of State taxes, and also requires that the document must provide for continuing, amending or repealing city ordinances.[1] Under the Texas Constitution provision is made that no tax for any purpose shall exceed 2½ per cent of the taxable property of the city and that no debt shall be created by a city unless provision is made for the collection annually of a sum sufficient to pay the interest and create a sinking fund.[2]

The Scope of Municipal Home-Rule Powers in Actual Practice and the Relation between Such Powers and State Laws.

Perhaps the most important problem connected with the subject of home-rule charters is the scope of municipal powers under such charters and the extent to which charter provisions are made subject to State laws. As has already been explained, home rule does not mean that a city which has adopted a home-rule charter is removed from the control of general State laws but merely that it is given a somewhat larger freedom to deal with matters which are primarily of local concern. The problem then is to determine where the line has been drawn in law and in practice between matters which are of "local concern" and those which are of general or State interest. These matters cannot be determined merely by reference to constitutional provisions, but legislation and court decisions must be taken into consideration in each State.

In the preceding analysis of home-rule provisions it was pointed out that the constitutions of ten of the States expressly declare in one form or another that the self-governing powers conferred upon home-rule cities shall as a whole or in part be subject to the "general laws" of the State.[3] As a general rule no attempt is made in these States to define what specific power a city may exercise without coming into conflict with State laws, and judicial decisions must be looked to for an interpretation of these matters. One finds, therefore, a wide variation in

[1] *Constitution of Nebraska*, XIa, 3–4.

[2] *Constitution of Texas*, XI, 5.

[3] In Arizona, Michigan, Missouri, Minnesota, Nebraska, Oklahoma, Texas and Washington, charters must be in conformance with either "laws" or "general laws" of the State. In Ohio, police, sanitary and similar regulations must be in compliance with general laws. In California self-governing powers must conform to general laws except in "municipal affairs." In Colorado and Oregon there is no requirement that the charter shall be subject to the general laws.

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some States between the grant of power in the constitutional provision and the exercise of that power in actual practice. The reason for this is that the Legislature in each State has exercised a different degree of power over municipalities even though constitutional restrictions may read the same, and that when grants of power have been general or indefinite the courts have interpreted powers differently.

Scope of Home Rule in Missouri. — The case of Missouri is interesting as illustrating the manner in which legislative enactments and court decisions have affected the exercise of home-rule privileges and powers to a very large degree. In common with most of the other States the Missouri Constitution contains a provision which expressly declares that a home-rule charter shall always be in harmony with and "subject to the Constitution and the laws of the State."[1] Special legislation is elsewhere prohibited in the Constitution, but as both of the home-rule cities, St. Louis and Kansas City, are in a single class, the limitation against special legislation is of no consequence and in practice the Legislature may enact any special laws it sees fit applying to these two home-rule cities.[2] Since the wording of the Missouri constitutional provision is in very general terms the question has arisen as to what are the laws of the State with which a charter may not come into conflict. In the various cases that have come before the courts in Missouri, charter provisions have been held void when they came into conflict with State laws regarding police, liquor licenses, elections, taxation, assessments, the rights of persons against the city, etc. But on the other hand the courts have held that charter provisions supersede State laws in regard to control of parks, street improvements, removal of municipal officers, etc.[3] Because of the rather vague provision in the Constitution, cities are under the necessity of looking to the courts for a distinction between municipal affairs and matters of State concern

Scope of Home-Rule Power in Washington. — In Washington, where the constitutional provision is practically the same as that of Missouri, the courts have not established a distinction

[1] *Constitution of Missouri*, Art. IX, sects. 16, 20.
[2] McBain, p. 124. Also case of McCaffrey v. Mason (1899), 155 Mo. 486.
[3] *Ibid.*, pp. 133-171.

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between State and local affairs, but municipalities nevertheless enjoy a considerable degree of home rule "due to the liberal practice of the Legislature in conferring powers and in refraining from occupying fields of municipal control." [1]

Scope of Home-Rule Powers in Minnesota, Michigan and Texas. — Minnesota, Michigan and Texas afford examples of States in which the home-rule provisions of the Constitution contain merely general grants of power and give to the Legislature the power of working out the machinery or limitations under which charters are to be framed and also to determine the powers of cities, the character of their government and the like. According to the Constitution of Minnesota, for example, cities are given only a limited power of home rule, and such home rule as does exist in that State "is referable more largely to the dispensation of the Legislature than to any protection guaranteed by the Constitution." [2] In Michigan and Texas it was necessary for the Legislature to pass enabling acts before cities could exercise their home-rule powers.[3]

Scope of Home-Rule Powers in California and Colorado. — California and Colorado have followed a somewhat different method of granting home-rule powers than most of the States and have included in their Constitutions provisions which endeavor to define more clearly the relation between home-rule powers and State laws. The California Constitution provides that a home-rule charter may authorize the municipality governed thereunder to "make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters." [4] Local ordinances and regulations are, therefore, subject to general laws only when they deal with matters outside the realm of "municipal affairs." The California Constitution does not stop here but goes on to enumerate the most important "municipal affairs" that a charter may provide for, the provision being that the charter may authorize (1) the establishment and regulation of police and municipal courts, and for the election of judges of such courts; (2) for election, term, etc., of boards of

[1] McBain, p. 456.
[2] *Ibid.*, p. 497.
[3] *Public Acts of Michigan, 1909*, No. 279; *Laws of Texas, 1913*, Chap. 147.
[4] *Constitution of California*, XI, 8.

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education; (3) for term, election or appointment of boards of police commissioners; (4) for the holding of municipal elections; (5) for the annexation of territory, etc.[1]

Thus it is seen that the California Constitution, by enumerating the provisions which a charter may contain, defines more definitely the scope of the powers which a home-rule city may exercise and makes it easier to determine what are included among those "municipal affairs" which can be regulated by the city without coming into conflict with the laws of the State.

Colorado, as has been pointed out, is the only State except Oregon which does not expressly require that the provisions of a home-rule charter shall be subject to general laws, thus giving cities a larger degree of self-government than in other States. The Constitution was also amended in 1912 so as to enumerate in even greater detail than the California Constitution the powers that may be exercised by a home-rule city; the most important of such powers being: (1) the creation and terms of municipal officers, their powers, duties, etc.; (2) the creation of municipal and police courts; (3) all matters pertaining to municipal elections; (4) the issuance, refunding and liquidating of all kinds of municipal obligations, the assessment, levy and collection of taxes, etc. It is expressly stipulated that the purpose of the home-rule article is "to grant and confirm to the people of all municipalities, coming within its provisions the full right of self-government . . . in municipal affairs" and that the enumeration of certain powers is not to be construed to deny such cities and towns any power essential to the exercise of the right of self-government.[2] As a result of these provisions a city may not only regulate ordinary matters of local and municipal concern through the medium of its charter but may also exercise certain powers that are enumerated in the Constitution and which might otherwise be regarded as falling within the jurisdiction of the State Legislature. Whenever the charter is silent, however, as to a matter of either State or local concern, the courts have decided that a State law regulating the subject will apply. All things considered, the Constitution of Colorado, by means of a broad general grant of authority

[1] *Constitution of California*, XI, 8½.
[2] *Constitution of Colorado*, XX, 6 (Amendment of 1912).

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supplemented by a rather detailed enumeration of the express powers which a home-rule city may exercise, allows to cities a somewhat larger amount of self-government than that of any other commonwealth except California.

Conclusion as to Extent of Home-Rule Powers in the Various States.

The foregoing sketch indicates that the actual practice of home rule in any State is determined not only by constitutional provisions, but also by legislative enactments supplementary to the constitution and by judicial decisions which mark the line between State and local functions. Since there is a wide difference of opinion as to what matters are of purely municipal concern and what are of such State-wide interest as to demand State regulation, it would seem that the more vague the terms in the constitution, the less definite is the result to be expected. In framing a home-rule provision the experience of other States would appear to favor, therefore, the inclusion of at least a broad distinction between State and local functions so as to indicate in a general way what subjects are to be left under the jurisdiction of the Legislature, and what are to be handed over to local control.[1]

IV. Optional Charter Laws.

The most recent method of allowing a certain degree of elasticity in the granting of municipal charters without going so far as to provide for complete home rule has been the optional charter system which is found in the five States of Massachusetts, New York, North Carolina, Ohio and Virginia. In each of these States the Legislature has passed a law outlining three or more forms of government and permitting a city to adopt any one of these plans by popular vote. Ohio and New York were the first to establish such a system, the Ohio law of 1913 providing three plans of government, — commission form, the city manager plan, and the "federal" or mayor and council form, — any one of which may be adopted at a special election called upon petition of 10 per cent of the voters.[2] It is of

[1] For a summary of the model home-rule provision recommended by the Committee on Municipal Program of the National Municipal League, see Appendix, p. 443.

[2] *Laws of Ohio, 1913*, pp. 767–786.

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interest to note that Ohio is also one of the twelve States that has provided for home rule and that the optional charter scheme is intended for those cities which do not avail themselves of the privilege of drawing up their own charters. The experience so far in Ohio indicates that the cities prefer the home-rule system of obtaining charters as very few of them have come under the provision of the optional charter law.

The New York optional charter law was also adopted in 1913 and provides that any city except the three largest (New York, Buffalo and Rochester) may adopt any one of the following six forms of charter:[1] —

Plan A. Limited council (commission form). Three or five members including mayor elected at large. One member at head of each department.

Plan B. Limited council with collective supervision. Three or five members including mayor elected at large. Individual members of council do not serve as heads of departments but subordinates are appointed for this purpose.

Plan C. Limited council with city manager.

Plan D. Separate executive and legislative departments. Mayor and council of five.

Plan E. Legislative department consisting of nine councilmen elected at large.

Plan F. Legislative department consisting of councilmen elected at large.

In a recent case Justice Emerson of the New York State Supreme Court declared the optional city government law of that State, so far as applicable to the city of Watertown, to be unconstitutional and enjoined the organization of the city under the provisions of that act. Watertown had just adopted the city manager plan under the optional charter law, and it is stated that if this decision is adhered to municipalities with the city-manager type of government may have to revert to the old plans of organization and that the optional charter law as a whole may be invalid.[2]

The most recent States to provide optional charter acts were Virginia and Massachusetts in 1914–15 and North Carolina in 1917.[3] Under the Massachusetts law any city except Boston

[1] *Laws of New York, 1913*, Chap. 444.

[2] *Municipal Journal*, April 5, 1917, p. 501. "City Manager Charters Declared Unconstitutional."

[3] *General Acts of Massachusetts, 1915*, Chap. 267. For further description of the Massachusetts optional charter law see *post*, p. 439. For Virginia law, see *Laws of Virginia, 1914*, Chap. 94.

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may adopt either a scheme of government which provides for a mayor and a council elected at large or one in which the chief governing authorities are a mayor and a council elected partly from wards or partly at large, or it may adopt the commission form of government or the city-manager plan.

V. The Relation between the City and the State in Massachusetts.

In conclusion something should be said of the existing situation in Massachusetts. Municipalities in Massachusetts derive their charters and all their powers from the State Legislature, the Constitution specifically providing that the General Court shall have full power in granting and annulling charters except that towns under twelve thousand may not be incorporated as cities and that no town shall be created as a city without the consent of a majority of the inhabitants.[1]

Massachusetts has until recently followed exclusively the practice of incorporating cities and providing for their powers by special acts, and there is no general municipal code applicable to all cities. This system has resulted in separate charters for each city, no two of which are alike. Petitions for new charters or for amendments to existing ones are sent to the Legislature every year by a large number of cities and some cities send two or three alternative proposals. The special laws relating to Boston actually passed from 1885 to 1908 were no less than four hundred in number and fill a volume of 600 pages.[2]

With a view to relieving themselves of this burden the General Court, as has already been noted, enacted in 1915 an optional charter law which provides that any city except Boston may adopt any one of the following forms of government:[3] —

Plan A, providing for a mayor and nine councillors elected at large.
Plan B, providing for a mayor and a number of councillors not exceeding fifteen, part to be elected at large and part from wards.
Plan C, providing for commission government with a council of five members.
Plan D, providing for the city-manager plan with a council of five.

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[1] *Constitution of Massachusetts*, Art. II of Amendments.
[2] *Statutes relating to City of Boston* (ed. T. M. Babson, Boston, 1908).
[3] *General Acts of Massachusetts, 1915*, Chap. 267.

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The procedure for adopting one of the above plans of government may be initiated by petition of at least ten per cent of the registered voters of the town or city. An election is then called and if a majority voting on the question are in favor of the proposal the city is organized under the new plan. While the frame of government differs under each scheme certain provisions of general concern are applicable to all four plans.

At the present time, therefore, cities in Massachusetts may obtain new charters or charter amendments by special act from the Legislature, or they may adopt one of the plans of the optional charter law. Cambridge, with a population of about one hundred and twelve thousand, is the largest city in the State operating under one of the optional forms.

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APPENDIX A.

HOME-RULE PROVISIONS OF STATE CONSTITUTIONS.

Ohio, Article XVIII, Sec. 3, 7.

SEC. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with the general laws. (Adopted Sept. 3, 1912.)

SEC. 7. Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government. (Adopted Sept. 3, 1912.)

Michigan, Article VIII, Sec. 21, 22, 23.

SEC. 21. Under such general laws,[1] the electors of each city and village shall have power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or passed by the Legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the Constitution and general laws of this State.

SEC. 22. Any city or village may acquire, own, establish and maintain, either within or without its corporate limits, parks, boulevards, cemeteries, hospitals, almshouses and all works which involve the public health or safety.

SEC. 23. Subject to the provisions of this Constitution, any city or village may acquire, own and operate, either within or without its corporate limits, public utilities for supplying water, light, heat, power and transportation to the municipality and the inhabitants thereof; and may also sell and deliver water, heat, power and light without its corporate limits to an amount not to exceed twenty-five per cent of that furnished by it within the corporate limits; and may operate transportation lines without the municipality within such limits as may be prescribed by law: Provided, That the right to own or operate transportation facilities shall not extend to any city or village of less than twenty-five thousand inhabitants.

[1] General laws referred to are those enacted by the Legislature for the incorporation of cities.

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Oklahoma, Article XVIII, Sec. 3 (a), 3 (b).

SEC. 3. (*a*) Any city containing a population of more than two thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a board of freeholders, composed of two from each ward, who shall be qualified electors of said city, to be elected by the qualified electors of said city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such board or a majority of them, and returned, one copy of said charter to the chief executive officer of such city, and the other to the register of deeds of the county in which the said city shall be situated. Such proposed charter shall then be published in one or more newspapers published and of general circulation within said city, for at least twenty-one days, if in a daily paper, or in three consecutive issues, if in a weekly paper, and the first publication shall be made within twenty days after the completion of the charter; and within thirty days, and not earlier than twenty days after such publication, it shall be submitted to the qualified electors of said city at a general or special election, and if a majority of such qualified electors voting thereon shall ratify the same, it shall thereafter be submitted to the Governor for his approval, and the Governor shall approve the same if it shall not be in conflict with the Constitution and laws of this State. Upon such approval it shall become the organic law of such city and supersede any existing charter and all amendments thereof and all ordinances inconsistent with it. A copy of such charter, certified by the chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them shall, after the approval of such charter by the Governor, be made in duplicate and deposited, one in the office of the Secretary of State, and the other, after being recorded in the office of said register of deeds, shall be deposited in the archives of the city; and thereafter all courts shall take judicial notice of said charter. The charter so ratified may be amended by proposals therefor, submitted by the legislative authority of the city to the qualified electors thereof (or by petition as hereinafter provided) at a general or special election, and ratified by a majority of the qualified electors voting thereon, and approved by the Governor as herein provided for the approval of the charter.

SEC. 3. (*b*) An election of such board of freeholders may be called at any time by the legislative authority of any such city, and such election shall be called by the chief executive officer of any such city within ten days after there shall have been filed with him a petition demanding the same, signed by a number of qualified electors residing within such city, equal to twenty-five per centum of the total number of votes cast at the next preceding general municipal election; and such election shall be held not later than thirty days after the call therefor. At such election a

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vote shall be taken upon the question of whether or not further proceedings toward adopting a charter shall be had in pursuance to the call, and unless a majority of the qualified electors voting thereon shall vote to proceed further, no further proceedings shall be had, and all proceedings up to that time shall be of no effect.

Oregon, Article XI, Sec. 2.

SEC. 2. *Corporations Formed Under General Law, Not Special — Municipal Charters Enacted Only By People.* Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon.

Note. — The foregoing section was proposed by initiative petition filed June 23, 1910, and adopted by vote of the people, 96,116 for and 77,671 against, November 3, 1910.

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APPENDIX B.

HOME-RULE CONSTITUTIONAL PROVISION RECOMMENDED BY THE COMMITTEE ON MUNICIPAL PROGRAM OF THE NATIONAL MUNICIPAL LEAGUE.

SECTION 1. *Incorporation and Organization.* Provision shall be made by a general law for the incorporation of cities and villages; and by a general law for the organization and government of cities and villages which do not adopt laws or charters in accordance with the provisions of Sections 2 and 3 of this article.

SECTION 2. *Optional Laws.* Laws may be enacted affecting the organization and government of cities and villages, which shall become effective in any city or village only when submitted to the electors thereof and approved by a majority of those voting thereon.

SECTION 3. *City Charters.* Any city may frame and adopt a charter for its own government in the following manner. The legislative authority of the city may by a two-thirds vote of its members, and, upon the petition of ten per centum of the qualified electors, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage, otherwise, at a special election to be called and held within the time aforesaid; the ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation.

Such candidates shall be nominated by petition which shall be signed by not less than two per cent of the qualified electors, and be filed with the election authorities at least thirty days before such election; provided, that in no case shall the signature of more than one thousand (1,000) qualified electors be required for the nomination of any candidate. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving the highest number of votes (or if the legislative authority of the state provides by general law for the election of such commissioners by means of a preferential ballot or proportional representation or both, then the fifteen chosen in the manner required by such general law) shall constitute the charter commission and shall proceed to frame a charter.

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Any charter so framed shall be submitted to the qualified electors of the city at an election to be determined by the charter commission, which shall be at least thirty days subsequent to its completion and distribution among the electors and not more than one year from the date of the election of the charter commission. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provision for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city not less than thirty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon shall become the organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are in conflict therewith. Within thirty days after its approval the election authorities shall certify a copy of such charter to the Secretary of State, who shall file the same as a public record in his office, and the same shall be published as an appendix to the session laws enacted by the legislature.

SECTION 4. *Amendments.* Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided in section 3 for framing and adopting a charter. Amendments may also be proposed by two-thirds of the legislative authority of the city, or by petition of ten per cent. of the electors; and any such amendment, after due public hearing before such legislative authority, shall be submitted at a regular or special election as is provided for the submission of the question of choosing a charter commission. Copies of all proposed amendments shall be sent to the qualified electors. Any such amendment approved by a majority of the electors voting thereon shall become a part of the charter of the city at the time fixed in the amendment and shall be certified to and filed and published by the Secretary of State as in the case of a charter.

SECTION 5. *Powers.* Each city shall have and is hereby granted the authority to exercise all powers relating to municipal affairs; and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature, in matters relating to state affairs, to enact general laws applicable alike to all cities of the State.

The following shall be deemed to be a part of the powers conferred upon cities by this section: —

(*a*) To levy, assess and collect taxes and to borrow money, within the limits prescribed by general law; and to levy and collect special assessments for benefits conferred;

(*b*) To furnish all local public services; to purchase, hire, construct, own, maintain, and operate or lease local public utilities; to acquire, by condemnation or otherwise, within or without the corporate limits, prop-

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erty necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and regulate the exercise thereof;

(*c*) To make local public improvements and to acquire, by condemnation or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over that needed for any such improvement, and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement;

(*d*) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or of both, including in the case of a public utility, if deemed desirable by the city, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

(*e*) To organize and administer public schools and libraries, subject to the general laws establishing a standard of education for the State.

(*f*) To adopt and enforce within its limits local police, sanitary and other similar regulations not in conflict with general laws.

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APPENDIX C.

TABLE SHOWING PROCEDURE OF CHARTER MAKING UNDER HOME-RULE PROVISIONS.[1]

STATE.	I. METHOD OF INITIATION.	II. RATIFICATION.		III. METHOD OF AMENDMENT.	
		Municipal.	State Approval.	Initiation.	Ratification.
Missouri (1875).	By ordinance of council calling for election of freeholders.[2]	Four-sevenths of those voting at a general or special election.[3]	None.	Council may propose.	Three-fifths of those voting at a general or special election.
California (1879).	Two-thirds vote of council calling election of freeholders; compulsory upon petition of 15 per cent of voters.	Majority voting thereon at a general or special election.	Concurrent resolution of absolute majority in State Legislature. Legislature may not amend.	May be proposed by council or by petition of 15 per cent of voters.	Same as under II.
Washington (1889).	By ordinance of council calling election of freeholders; compulsory upon petition of 25 per cent of voters.	Majority voting thereon at a general or special election.	None.	May be proposed by council or by 15 per cent petition or charter may provide.	Majority voting thereon at a general election but charter may provide at a special election.
Minnesota (1896).	Judge of district court may appoint freeholders; compulsory upon petition of 10 per cent of voters.[4]	Four-sevenths of those voting at a general or special election.[5]	None.	May be proposed by board of freeholders or by petition of 5 per cent of voters.	Three-fifths of those voting at a general or special election.

[1] Unless otherwise noted the procedure is prescribed by the Constitution.
[2] Determined by law.
[3] In St. Louis only a majority required.
[4] Made compulsory by law.
[5] Majority of three-fourths required to change "patrol limits."

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TABLE SHOWING PROCEDURE OF CHARTER MAKING UNDER HOME-RULE PROVISIONS [1] *Concluded.*

STATE.	I. METHOD OF INITIATION.	II. RATIFICATION		III. METHOD OF AMENDMENT	
		Municipal.	State Approval.	Initiation.	Ratification.
Colorado (1902).	On petition of 5 per cent of voters council must submit proposal for charter convention.	Majority voting thereon at a special election.	None.	May be proposed only on petition of 5 per cent of voters.	Majority voting thereon at a general election; but if by petition of 10 per cent at a special election.
Oregon [2] (1906).	New charter may be submitted by council or by petition of not over 15 per cent of voters.	Council itself or a majority voting thereon at a general or special election.	None.	Same as under I.	Same as under II.
Oklahoma (1907).	By ordinance of council calling election of freeholders, compulsory upon petition of 25 per cent of voters.	Majority voting thereon at general or special election.	Governor must approve if not in conflict with State Constitution and laws.	Council may propose; or by petition of 25 per cent of voters.	Same as under II.
Michigan [3] (1908).	Council may by two-thirds vote submit proposal for charter commission; compulsory upon petition of 25 per cent of voters.	Majority voting thereon at a general or special election.	Governor must approve before submitted to voters; veto may be overridden by two-thirds of charter commission.	Council may propose by two-thirds vote; or by petition of 25 per cent of voters.	Same as under II, except that Governor's veto may be overridden by two-thirds vote of council.
Arizona (1912).	By ordinance of council calling election of freeholders; compulsory upon petition of 25 per cent of voters.	Majority voting thereon at general or special election compulsory.	Governor must approve if not in conflict with State Constitution and laws.	May be proposed by council or by petition of 25 per cent of voters.	Same as under II.

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Ohio (1912).	Council by two-thirds vote may submit proposal for charter commission; compulsory upon petition of 10 per cent of voters.	Majority voting thereon at general or special election.	None.	May be proposed by council or by petition of 10 per cent of voters. Two-thirds vote of council required.	Same as under II.
Nebraska (1912).	Council may submit proposal for election of freeholders; compulsory upon petition of 5 per cent of voters.	Majority voting thereon at a general or special election.	None.	May be proposed by council or by petition of 5 per cent of voters.	Same as under II.
Texas[3] (1912).	Council may by two-thirds vote propose charter commission; compulsory upon petition of 10 per cent of voters.	Majority voting thereon at a general or special election.	None.	May be proposed by council or by petition of 10 per cent of voters.	Same as under II.

[1] Unless otherwise noted the procedure is prescribed by the Constitution.
[2] No procedure prescribed by Constitution, but provisions of initiative and referendum apply.
[3] Procedure prescribed entirely by law.

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BULLETIN No. 12

COMMISSION GOVERNMENT IN AMERICAN CITIES

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COMMISSION GOVERNMENT IN AMERICAN CITIES.

I. Origin of Commission Government.

The form of city government which first developed in this country and which still prevails as the most common type is the so-called mayor and council plan according to which the corporate powers of the municipality are divided among a mayor, a council usually elected from wards, and a number of independent administrative officials chosen either by popular vote or by the city council. This was practically the only system of municipal government to be found in the United States prior to the beginning of the twentieth century when Galveston, Texas, experimented with a new scheme.

The Galveston Plan.

Following a disastrous tidal wave which almost destroyed the city, the people of Galveston in 1901 petitioned the Legislature that the administration of municipal affairs be given to a small board of business men. The Legislature complied with this request and created a commission of five members, three to be appointed by the Governor and two to be elected by the voters of the city.[1] A year or two later the appointment of city officers by State authorities was held unconstitutional, with the result that the Legislature amended the act in 1903 so that all the members of the Galveston commission should be chosen by popular vote.[2]

Although it was adopted merely to tide over a temporary emergency the new plan attracted the attention of other communities, with the result that in 1905 Houston, Texas, adopted a similar charter.[3]

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[1] *Special Laws of Texas, 1901*, Chap. 12.
[2] *Special Laws of Texas, 1903*, Chap. 37, amending the charter of Galveston, April 18, 1901.
[3] *Special Laws of Texas, 1905*, Chap. 17, pp. 131–171.

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The Des Moines Plan.

Prior to 1907 commission government had not spread beyond the two Texas cities of Galveston and Houston, but in that year the Iowa Legislature passed an act permitting any city in the State having a population of more than 25,000 to adopt the commission type of government. Des Moines was the first city to take advantage of this act, and was also the first city outside of Texas to accept the new plan.[1]

The so-called Des Moines plan of commission government, which has become the model for later commission government laws and charters, is very similar in its essential provisions to that of Galveston, but embodies some new features. In brief it provides for the concentration of all legislative and executive functions in a small board consisting of a mayor and four commissioners elected at large for terms of two years each. Under the Des Moines plan the business of the city is grouped into five departments — public affairs, accounts and finances, public safety, streets and public improvements and parks and public property. The commissioner who is elected mayor becomes *ex-officio* head of the department of public affairs, while each of the other commissioners is assigned to the headship of one of the other departments by a majority vote of the council. All officers and employees in the departments are appointed by the council as a whole. Provision is also made for the appointment of a board of three civil service commissioners to have charge of the State laws relating to civil service.

The Des Moines plan so far differs very little from the Galveston system. The new feature of the Des Moines scheme is that it adds the initiative, referendum and recall, which were not provided for in Galveston. Under the initiative twenty-five per cent of the qualified voters of the city may present a petition to the council containing a proposed ordinance, and if the council does not pass such ordinance, it must be submitted to the voters for ratification or disapproval. Under the referendum provision, no measure passed by the council, except an emergency measure, can go into effect until ten days after its passage. If during this interim a petition

[1] *Laws of Iowa, 1907*, Chap. 48; amended by *Laws of 1909*, Chap. 64, and by *Laws of 1913*, Chap. 102, so as to apply to all cities and towns over 2,000. See Appendix A for a digest of the Iowa law.

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signed by twenty-five per cent of the voters is presented to the council protesting against such ordinance it is the duty of the council to reconsider the matter. If the ordinance is not rescinded it must be presented to the voters at a regular election if one is held within ninety days; otherwise at a special election held for the purpose.[1]

The recall provision permits the voters to remove any member of the council after he has been in office for at least three months. In order to bring about an election for the recall of a commissioner a petition must be filed, signed by at least twenty-five per cent of the voters. At the recall election a vote is taken as to whether the commissioner shall be removed and also on the names of candidates to succeed him in case his recall is favored by a majority of the electors. A commissioner whose removal is sought may be a candidate to succeed himself, and unless he otherwise requests his name is automatically placed on the ballot.

Spread of Commission Government.

Following the adoption of the revised commission system in Des Moines, a number of cities all over the country abolished the mayor and council plan and adopted the new system, so that to-day there are about three hundred and fifty cities with commission government varying in size from Buffalo and New Orleans with populations of 457,723 and 361,221 respectively, to small villages of a thousand or so. The only States in the Union which do not have at least one commission government city are New Hampshire, Vermont, Rhode Island, Delaware and Indiana. Of the various cities with government by commission, only five — Buffalo, New Orleans, St. Paul, Jersey City and Portland (Oregon) — are over 200,000 in population;[2] fourteen have from 100,000 to 200,000,[3] while the remainder

[1] Under both the initiative and referendum at least twenty-five per cent of the voters must sign the petition if the question is to be presented at a special election. Only ten per cent is required for submission at a regular election.

[2] Buffalo, 457,723; New Orleans, 361,221; Jersey City, 293,403; Portland, 259,582; St. Paul, 236,766.

[3] Lowell, Mass., 111,004; Oakland, Cal., 186,902; Birmingham, Ala., 164,165; Memphis, Tenn., 143,231; Spokane, Wash., 135,657; Omaha, Neb., 133,274; San Antonio, Tex., 116,890; Nashville, Tenn., 114,899; Dallas, Tex., 113,525; Houston, Tex., 104,726; Salt Lake City, Utah, 109,736; Tacoma, Wash., 103,418; Trenton, N. J., 107,228; Reading, Pa., 103,361.

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vary widely in size. Thus it is seen that in general the commission government movement has met with the greatest favor in the smaller cities.[1]

Although the plan has been defeated in a number of medium-sized cities, the most important of which have been Minneapolis, Minnesota, Savannah, Georgia, Cambridge, Massachusetts, Bridgeport, Connecticut, and Camden, New Jersey, there are only a few places which have given up commission government after once adopting it, the most striking examples being Denver, Colorado, Salem, Massachusetts, and Huntsville, Alabama, which have returned to the former mayor and council system.

II. Methods of Adoption.

Commission government has been established in the various cities by four different methods; namely, by general commission government laws enacted by the Legislature, by special legislative charters, optional charter laws, and home-rule charters. No State has provided expressly for commission government in its constitution, although twelve State constitutions permit cities to draw up their own charters, and under this provision they may establish the commission plan.

General Laws.

The most common method of providing for commission government has been by general law. There are to-day twenty States which have enacted permissive commission government laws, the provisions of which may be adopted by a city upon approval of the voters of the community. These States are Arkansas (1913); Idaho (1911); Illinois (1910); Iowa (1907); Kansas (1907); Kentucky (1910); Louisiana (1910); Mississippi (1908); Montana (1911); Nebraska (1911); New Jersey (1911); New Mexico (1909 under Territorial government; 1913 under State government); North Dakota (1907); South Carolina (1910); South Dakota (1907); Tennessee (1913); Texas (1909); Washington (1911); Wisconsin (1909); and Wyoming (1911). Missouri (1913) also has a permissive commission government law for cities of the third class, but makes this

[1] For list of all cities that have adopted commission government see Appendix E.

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form of government mandatory for all cities of the second class, which includes places of 30,000 to 75,000 in population.[1]

In some of these States, such as New Jersey, commission government as provided for in the general law may be adopted by any city of the State; in others, such as Arkansas, Kentucky, Louisiana, etc., where cities are divided into classes, only certain classes of municipalities may come under the new form. As a rule the places to which general commission government acts do not apply are the metropolitan centers such as Chicago in Illinois and St. Louis in Missouri, or the very small cities under two or five thousand in population.

In all of the twenty-one States above-mentioned, except Missouri, commission government is merely permissive and may be adopted by any city upon petition and popular approval by a majority of the voters. In the four States of Alabama, Missouri, Pennsylvania and Utah, however, commission government is made obligatory for a part or all of the cities in the Commonwealth. In Alabama commission government is mandatory for all cities of from 25,000 to 50,000 in population; in Missouri all cities of the third class (30,000 to 75,000) have to operate under the commission plan; in Pennsylvania it is required for all of the cities of the State except Philadelphia, Pittsburgh and Scranton; while in Utah it is obligatory for cities of the first and second classes.[2]

In those States where the commission government law is merely permissive, the machinery for adoption may, as a general rule, be placed in operation by a petition signed by a certain percentage of the voters praying that the question of accepting the act be submitted at a general election if one is held within a certain time, or at a special election if no general election occurs within the specified time. The percentage for placing the question of adoption before the voters varies from ten per cent in Illinois and North Dakota to thirty-five per cent in Oklahoma and forty per cent in Kansas,[3] the most common requirement being twenty-five per cent. If a majority of the electors voting on the proposition are in favor thereof, the plan goes into operation on the date specified in the law.

[1] For references to permissive laws see Appendix D.
[2] For references to obligatory laws see Appendix D.
[3] Forty per cent in smaller cities; ten per cent in cities above 15,000.

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Optional Charter Laws.

Somewhat similar to the general permissive commission government acts are the recent optional charter laws of Massachusetts, New York, North Carolina, Ohio and Virginia, under which a city may adopt any one of several plans of government, including government by commission.[1] According to the Massachusetts statute, for example, a city upon petition of ten per cent of the electors may vote on the question of adopting Plan C or commission government, and if a majority voting thereon are in favor of the proposition, the new system goes into effect on the date specified in the statute.

Home-Rule Charters.

In twelve of the States, including Arizona, California, Colorado, Minnesota, Michigan, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Texas and Washington, the State constitutions contain home-rule provisions giving cities the privilege of drawing up their own charters. This method has been used to a fairly large extent in those States where it is provided for, and several important cities, such as Portland, Oregon, and Spokane, Washington, have established government by commission in this manner.

Adoption by Special Legislative Charter.

The fourth method of providing for commission government is by special charters enacted by the Legislature. This has been the common method in States like Florida, Georgia, Maine and Maryland, which do not have home-rule provisions and in which the Legislatures have not seen fit to pass general commission government laws or optional charter acts. Some of the more important cities which have been given commission government by this method are Buffalo, New York, Lynn, Lowell and Lawrence, Massachusetts.

[1] *General Acts of Massachusetts, 1915*, Chap. 267; *Laws of New York, 1914*, III., Chap. 444; *Laws of Ohio, 1913*, pp. 767-786; *Laws of Virginia, 1914*, Chap. 94; for North Carolina law see "An Act to provide for the Organization and Government of Cities, Towns and Incorporated Villages," passed by the North Carolina Legislature, Session of 1917.

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III. Summary of Provisions of Commission Government Laws and Charters.

The Commission.

From the above description of commission government in Galveston and Des Moines, it is seen that the first essential of the system is the concentration in the hands of a small board or commission of all the legislative and executive powers formerly exercised by the mayor, council and other elective officials. The size of the commission varies from three members in the cities of Wyoming, Wisconsin and New Mexico to seven in the largest cities of Nebraska. In the charter laws of some of the States, including Iowa, Kansas, Louisiana, Montana, Nebraska, New Jersey, South Carolina and Utah, the size of the commission varies with the population of the city. In Nebraska, for example, the act provides for seven members in cities of more than 100,000; five in cities of from 25,000 to 100,000; and three in places of less than 25,000. Taking all of the cities of the country into consideration the average number of commissioners is five.

As a general rule the commissioners are elected from the city at large on a non-partisan ballot after nomination by petition or by a primary election. An exception to this rule, however, is found in the city of Wilmington, North Carolina, where the commissioners are elected from wards instead of from the city at large. In a few cities, such as Spokane, Washington, Pueblo, Colorado, Portland, Oregon, Grand Junction, Colorado, and in all of the New Jersey cities, preferential voting has been introduced whereby the voter is permitted to express his first, second and third choices for candidates. The advocates of the preferential system claim that it dispenses with the necessity of complicated nominating machinery as a means of weeding out all but the leading candidates, and that it eliminates the election of a commissioner by a mere minority.

The term of office of commissioners varies from one year in Gloucester, Massachusetts, to six years in cities under the Wisconsin commission government law. Of seventy-seven cities with over thirty thousand population, thirty-five provide for two-year terms; six for three years; thirty-three for four years;

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one for five years and two for six-year terms, thus showing that the most common term of office is either two or four years.[1] Under the Des Moines or Iowa plan all of the commissioners are elected at one time. In the charter laws of some of the States, however, such as Alabama, North and South Dakota, and Montana and in the charters of such cities as Lawrence, Lowell, etc., provision is made that only a part of the members shall be chosen at each election, so as to make the commission a more continuous body.

In the larger cities the commissioners are required to give all of their time to their official duties, while in the smaller municipalities they give only part time. The Illinois law, for example, provides that —

> The mayor and each of the commissioners shall have an office at the municipal building or rooms, and shall devote such time to the duties of their respective offices as a faithful discharge thereof may require: *Provided*, that in cities of twenty thousand (20,000) population and over the mayor and commissioners shall devote at least six hours daily to the performance of their official duties.[2]

Since the commissioners in the larger cities are expected to look after the actual administration of the various departments, their salaries are higher than those paid to members of the council under the aldermanic form. Taking into consideration all of the commission government cities of more than thirty thousand people the highest salaries are paid in New Orleans, where the mayor receives $10,000 per annum and each of the other commissioners $6,000; Buffalo where the mayor receives $8,000 and each of the other commissioners $7,000, and Birmingham where the salary of each of the members, including the mayor, is $7,000. The compensation diminishes in the other places, roughly in proportion to the size of the city, the lowest salaries being in Galveston, Texas, and Boise, Idaho, which pay the mayor $2,000 and $1,800 respectively and the other commissioners $1,200.[3]

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[1] U. S. Bureau of the Census, *General Statistics of Cities, 1915*, Table 1, pp. 50–56.
[2] Hurd's *Revised Statutes of Illinois, 1915–16*, Chap. 24, Art. XIII, p. 342.
[3] U. S. Bureau of the Census, *General Statistics of Cities, 1915*, Table 1, pp. 50–57.

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Administrative Departments.

The second fundamental feature of commission government is that the administrative work of the city is divided into three, five or seven departments, as the case may be, and one commissioner is assigned to each. The designations of the departments and their functions vary in the different cities but the typical arrangement is the following: —

(1) Department of Public Affairs (mayor, miscellaneous functions).

(2) Department of Accounts and Finance.

(3) Department of Public Health and Safety (health, police and fire protection).

(4) Department of Streets and Public Improvements.

(5) Department of Public Property (municipal water and light plants, public buildings, etc.).

There are two general methods of distributing departments among the commissioners. In most cities the Des Moines plan is followed, according to which all of the commissioners except the mayor are elected without reference to any specific department and are then assigned to their respective places by a majority vote of the commissioners. The commission also determines by ordinance what duties or functions shall be performed by each of the departments. Another plan is followed, however, in such cities as Grand Junction, Colorado, Lawrence and Lynn, Massachusetts, Houston, Texas, and in the charter laws of Massachusetts, Arkansas and Louisiana, where each commissioner has his name placed on the ballot as a candidate for the headship of a particular department and is elected directly by the people to take charge of that department. In the cities of South Carolina a still different method is found. The general charter act of that State provides that the commissioners shall be allotted to the various departments by the mayor, with the proviso that rearrangements may be made when necessary by vote of the council.

Mayor.

Under practically all of the commission government laws and charters one of the commissioners is designated as mayor. In most cases the mayor is elected directly to this office by popular

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vote; in a few cities, such as Wilmington, North Carolina, Huntington and Bluefield, West Virginia, the mayor is that commissioner who receives the highest number of votes; while in New Jersey and Nebraska the laws provide that the mayor shall be chosen by majority vote of the commission from among its own membership. In most commission government cities the mayor is assigned to the department of public affairs and is given a number of miscellaneous functions of a general nature; in a few cities, such as Buffalo, New York, and Gardiner, Maine, he is placed in charge of the department of public safety or of the department of accounts and finance.

According to the typical plan of government by commission the mayor has no greater powers than any of the other members, except that he presides at meetings of the commission and represents the city in a ceremonial capacity. As presiding officer of the commission he has the right to vote on all matters, but in most cases he does not possess the veto power as does the mayor under the old aldermanic system. Exceptions are found, however, in St. Paul, Minnesota, and in a few small cities, including Dallas and Marshall, Texas, Ardmore, Oklahoma, and Chattanooga, Tennessee, where the mayor may veto any ordinance passed by the council, and in Colorado Springs where he may disapprove of items in appropriation ordinances.

The charter of Houston, Texas, gives the mayor somewhat greater power than any of the other commission government cities, the provision being that he shall have not only the right of veto but also the authority to appoint most of the important officials of the municipality.[1] Under the South Carolina statute the position of the mayor is also of greater importance than usual, since he assigns the various commissioners to their respective departments.[2] Then too, in some of the recent charters, such as those of Buffalo and of the Pennsylvania cities, there appears to be a tendency to give the mayor somewhat larger powers of general supervision and oversight of the affairs of the city. The Buffalo charter provides in this respect that it shall be the duty of the mayor to acquaint himself with the conduct of each of the other departments and to report thereon to the council with such recommendations as he may

[1] *Special Laws of Texas, 1905*, Chap. 17.
[2] *Laws of South Carolina, 1912*, p. 800, Sect. 14.

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deem advisable.[1] According to the Pennsylvania law the mayor is to have general supervision of all the city departments, and is required to keep the council informed as to the needs of the city and as to its financial condition.[2] The above-mentioned cases are exceptions, however, and in most instances it can be said that the mayor has little more power than any of the other commissioners.

Appointments.

Under the orthodox commission plan the most important subordinate officers of the city, such as city clerk, treasurer, auditor, solicitor and chief of police, are chosen by a majority vote of the commission, and each commissioner is permitted to appoint only the minor officials and employees in his department. A departure from this rule is found, however, in the optional charter law of Massachusetts, where the individual commissioners make all appointments within their respective departments, subject to ratification by the council. Civil service is provided for in a number of the commission government laws, including those of Arkansas, Iowa, Missouri and Montana, and in the charters of the larger cities such as Buffalo, St. Paul and Spokane.

Other Departments.

Practically all of the charters and laws provide that the schools shall be placed in charge of a separate board or department instead of being controlled by the commission. Buffalo, New York, St. Paul, Minnesota, Chattanooga, Tennessee, and Sacramento, California, however, have followed a different practice, and have entrusted the administration of the schools to the commission, which acts in the capacity of a school committee, appoints the superintendent, determines questions of policy, and so on.

Under the orthodox commission government system all of the departments except the schools are concentrated in the hands of the commission, and the only elective officials are the members of this board and of the school committee. In several cities, however, the centralization of functions is not so com-

[1] For digest of the Buffalo charter see Appendix C.

[2] *Laws of Pennsylvania, 1913*, Act No. 367, pp. 595–596, Sect. 4.

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plete, and provision is made for the election of other administrative officials — especially fiscal officers, such as the comptroller and auditor. Among the important cities whose charters provide for the popular election of the comptroller are St. Paul, Minnesota; Tacoma, Washington, and Houston, Texas; also the cities under the Pennsylvania commission government law. In San Diego, California, the treasurer is elected by the people, while in Portland, Oregon, the auditor is chosen in this way.

Initiative, Referendum and Recall.

Another feature of commission government laws and charters which is practically universal is provision for the initiative, referendum and recall. Of the States which have general commission government laws all but Alabama, New Mexico and Utah provide for the initiative, and all but New Mexico, Utah and Wisconsin for the referendum. The only States with general charter laws which do not include provision for the recall are Kentucky, New Mexico, Tennessee, Utah and Pennsylvania.

The initiative operates normally in the following manner: a prescribed number of voters may present a petition to the council or commission proposing an ordinance which they desire to have enacted. The commission has the option then of acting upon the ordinance itself and passing it in the form proposed, or it may submit the measure to the voters at a general or special election. The number of signatures required for an initiative petition is usually based on a certain per cent of the total vote cast at the last preceding municipal election, although in a few States, such as Mississippi and Wyoming, the percentage required is based on the total number of qualified voters. The signatures necessary for initiating a measure vary from five and ten per cent in the charter laws of South Dakota and Mississippi respectively to forty per cent in the second-class cities operating under the Kansas commission government law. The most common requirement is either fifteen or twenty-five per cent.

Under the referendum all ordinances passed by the council, except emergency measures for the immediate preservation of the public health or safety, are suspended from operation for a

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given time, usually ten days. If, during this interim, a petition is presented signed by a prescribed percentage of the voters, the commission must either repeal the ordinance or submit it to the people for their approval or disapproval. The percentage of voters necessary to put the referendum in operation is very similar to that for the initiative, varying from five per cent in North Dakota cities to thirty-five per cent under the Wyoming charter law.

The recall is a method for the popular removal of members of the commission, and may be employed in the case of any commissioner after he has been in office a certain length of time, generally six months. The machinery for the recall is placed in operation by the filing of a petition signed by a specified number of voters, varying from ten per cent in the Virginia charter law to fifty-five per cent in Illinois. If the petition is found to be sufficient, the commission must then call an election in order to choose some one for the prospective vacancy. In most cities the commissioner against whom charges have been made may be a candidate to succeed himself, and if he does not receive the highest number of votes at the recall election he is automatically removed and is displaced by the candidate who does receive such vote.

IV. Commission Government in Massachusetts.

Commission government has been in existence in Massachusetts since 1909, when Gloucester and Haverhill commenced operation under charters which had been obtained from the Legislature the previous year. In 1910 Lynn was granted a commission government charter, while Lawrence and Lowell were added to the list in 1911, and Salem in 1912.[1] The latter city abandoned the plan in 1915, so that there are now five cities in the Commonwealth operating under commission government. Lowell is the largest of these cities with a population of 111,000; Lynn has 98,000; Lawrence, 95,000; Haverhill, 47,000, and Gloucester, 24,000.

[1] Gloucester Charter, *Acts and Resolves of Massachusetts, 1908*, Chap. 611.
Haverhill Charter, *Acts and Resolves of Massachusetts, 1908*, Chap. 574.
Lynn Charter, *Acts and Resolves of Massachusetts, 1910*, Chap. 602 (Part I).
Lawrence Charter, *Acts and Resolves of Massachusetts, 1911*, Chap. 621 (Part II).
Lowell Charter, *Acts and Resolves of Massachusetts, 1911*, Chap. 645.
Salem Charter, *Acts and Resolves of Massachusetts, 1912*, Chap. 559 (Part II).

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In this connection it should be noted that during 1908 the Legislature enacted a special law providing for the appointment by the Governor of a Board of Control of five members to supervise the affairs of Chelsea following a serious fire which had almost destroyed the city.[1] This arrangement, however, was only temporary and came to an end in 1912 with the establishment of a new charter providing for the mayor and council plan.[2]

Haverhill, Gloucester and Lowell.

The charters of the three cities of Haverhill, Gloucester and Lowell are very similar. Each provides for a municipal council of five members, including the mayor and four aldermen, elected from the city at large on a non-partisan ballot for terms of two years except in Gloucester, where the term is one year. All of the powers of government except the administration of schools are centralized in the hands of this small board. The provision in the Lowell charter, for example, reads as follows: —

> The government of the city of Lowell and the general management and control of all its affairs shall be vested in a municipal council which shall be elected and shall exercise its powers in the manner hereinafter set forth; except, however, that the general management and control of the public schools of the city and the property pertaining thereto shall be vested in a school committee.[3]

The Lowell charter provides for five departments: public safety (under the mayor), finance, streets and highways, waterworks and fire protection, and public property and licenses. In Haverhill and Gloucester the departments are not created in the charter, but a distribution of functions similar to that in Lowell has been made by ordinance. In all three cities the commissioners are assigned to their respective departments by majority vote of the council. Appointments of the more important subordinate officials, such as city clerk, treasurer, auditor, etc., are made by the council as a whole, but under the Lowell charter each commissioner may appoint minor subordinates in his department. As to salaries, the Gloucester charter

[1] *Acts and Resolves of Massachusetts, 1908*, Chap. 559.
[2] *Acts and Resolves of Massachusetts, 1911*, Chap. 680, Part II.
[3] *Ibid.*, Chap. 645, Sect. 1. For digest of Lowell charter see Appendix B.

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provides that the mayor shall receive $1,200 per annum and each alderman, $1,000, but the council may change these salaries provided that the maximum for the mayor shall not exceed $1,800; under the Haverhill charter the mayor is allowed an annual compensation of $2,500 and each of the other members $1,800; while the Lowell charter fixes the salary of the mayor at $3,000 and that of each alderman at $2,500.

In the Gloucester charter, which was one of the first to be adopted, the initiative and referendum are established, but not the recall. In the charters of Haverhill and Lowell, on the other hand, all three of these devices for popular control are provided.

Lynn and Lawrence.

The Lynn and Lawrence charters establish a system similar to that of Gloucester, Haverhill and Lowell, but with one important difference. Under the Lynn and Lawrence plans of commission government, each commissioner is elected by the voters to the headship of a specific department instead of being assigned after election by a vote of the council. The Lawrence charter, for example, provides for a department of finance and public affairs (under the mayor), a department of public health and charities, a department of public safety, a department of engineering and a department of public property; and each candidate for election has his name placed on the ballot as an aspirant for a particular department.[1] In Lawrence the mayor receives $3,500 per annum and each of the other members of the council $2,500; while in Lynn the salaries are $3,500 and $3,000 for the mayor and aldermen respectively.

Commission Government under the Optional Charter Act.

All of the above-mentioned cities of Massachusetts have adopted commission government under special charters enacted by the Legislature and ratified by the voters in each municipality. Recently, however (1915), the Legislature has enacted an optional charter law providing for four plans of government, one of which, designated as Plan C, is the commission government system.[2] This form may be adopted by any city upon

[1] Amendment to Lawrence charter, *Acts and Resolves of Massachusetts, 1914*, Chap. 363.
[2] *General Acts of Massachusetts, 1915*, Chap. 267, Part IV, Plan C.

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the approval of a majority of the voters, and provides for a council of five members elected from the city at large for two-year terms, nominations to be by petition and all elections by non-partisan ballot. The salaries of the councilmen are fixed by the council itself, but may not exceed $5,000 per annum for the mayor and $4,000 for other members of the board.

The departments provided for are: (1) administration (mayor); (2) finance; (3) health; (4) public works and (5) public property. Each commissioner is elected directly by the people to the headship of one of these departments, which differs from the orthodox commission plan under which assignment is made after election. Another point of difference from the average plan of government by commission is that all subordinates and employees in each department are appointed by the commissioner in charge instead of by the majority vote of the commission, with the limitation, however, that appointments to the heads of divisions must be confirmed by the commission. The initiative and referendum are provided for, but not the recall. As yet no city has adopted commission government under this act.

The most important provisions of the commission plan as outlined by the optional charter law are as follows:[1] —

SECTION 2. The government of the city and the general management and control of all of its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner hereinafter set forth; except, however, that the general management and control of the public schools of the city and of the property pertaining thereto shall be vested in the school committee.

SECTION 3. The city council shall consist of five members, to wit: — a mayor, who shall be the commissioner of administration; a commissioner of finance; a commissioner of health; a commissioner of public works and a commissioner of public property. Each of these commissioners shall have charge of the department of city affairs indicated by his official title, except as to the affairs and property of the city which are within the jurisdiction of the school committee. All of these officers shall be elected at large by and from the qualified voters of the whole city for terms of two years, except as is hereinafter provided.

In case of a difference of opinion as to the departments to be in charge of any one or more of the commissioners, the matter shall be determined by vote of a majority of the commissioners.

[1] An Act to simplify the revision of city charters, *General Acts of Massachusetts, 1915*, Chap. 267, Part IV, Plan C.

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SECTION 8. The city council shall have and exercise all the legislative powers of the city except as such powers are . . . reserved to the school committee and qualified voters of the city; and the city council and its members shall severally or collectively, have and possess, and shall themselves or through such officers as they may elect or appoint, exercise all the other powers, rights and duties . . . possessed . . . immediately prior to the adoption of this act by the mayor, board of aldermen, common council and all other boards, commissions, and committees of the city . . . except such as are conferred upon the school committee or are otherwise provided for in this part.

SECTION 10. The mayor shall be the chief executive officer of the city, commissioner of administration and, *ex officio*, chairman of the school committee. He shall preside at all meetings of the city council and of the school committee at which he is present. He shall also, when present, preside at all joint conventions of the city council and of the school committee.

He shall have the right to vote on all questions coming before the city council, but shall have no power of veto.

He shall have such other duties, rights and powers as may be provided by ordinance, not in conflict with this act.

SECTION 11. All executive and administrative powers, authorities and duties, not otherwise provided for in this act, shall be assigned to a suitable department by the city council by ordinance, and changes in the assignments made in this manner may be made by ordinance by the affirmative vote of three members of the city council, or by the qualified voters of the city upon initiative petition.

The city council shall determine the policies to be pursued and the work to be undertaken in each department, but each commissioner shall have full power to carry out the policies or to have the work performed in his department as directed by the city council.

SECTION 12. Each commissioner may, except as is otherwise provided herein, appoint a qualified person to serve as the head of each department under his charge and may remove him at any time for cause stated in the order of removal. All appointments and removals so made shall be subject to confirmation by the city council. The employees in each department shall be appointed and removed by the head of that department. Nothing in this section shall in any way affect the laws governing the civil service.

V. CONCLUSION.

Commission government has been in operation in the United States for a period of about fifteen years, and may be considered as having passed the experimental stage. The principal advantages urged in favor of the plan are: First, that it does away with the scattering of powers and responsibilities which is

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oftentimes found under the mayor and council plan and concentrates all responsibility in a small board of popularly elected representatives. Secondly, it is urged that the management of a city's affairs is not so much a matter of government as it is of business, and that the commission plan makes possible the application of more business-like methods to city administration. Thirdly, it is said that this form of government reduces administrative friction and delay and enables a city to conduct its work promptly. Finally, it is claimed that commission government tends to secure a better type of municipal officers.

The arguments advanced against commission government are that it is undemocratic, because it centers too much power in a small group of officials; that it violates the doctrine of separation of powers by placing both the appropriating and spending functions in the same hands; and that it is especially open to criticism in not providing a single head for the administration.

As to the workings of commission government, the United States Bureau of the Census in 1915 compiled a series of tables showing the comparative financial statistics of a group of representative mayor and council and commission government cities of over 30,000 population.[1] The eight mayor and council cities which were chosen for comparison were Indianapolis, Indiana, (259,820); Hartford, Connecticut (107,521); Youngstown, Ohio (100,593); Troy, New York (77,560); Peoria, Illinois (70,006); Little Rock, Arkansas (53,811); Davenport, Iowa (46,537), and Charlotte, North Carolina (38,263), representing a total population in 1915 of 754,111, or an average of 94,000 each. The eight commission governed cities were Birmingham, Alabama (164,165); Lowell, Massachusetts (111,004); Salt Lake City, Utah (109,736); Des Moines, Iowa (97,304); Pueblo, Colorado (51,218); Topeka, Kansas (47,102); Montgomery, Alabama (42,154), and Austin, Texas (33,218), with a total population of 655,901, or an average of 82,000 for each city.

A comparison of tax levies in the two groups of cities for 1915 shows that the average per capita levy of property taxes for the eight mayor and council cities was $16.36 as against $12.31 in the commission government cities, or a difference of

[1] U. S. Bureau of the Census, *Comparative Financial Statistics of Cities under Council and Commission Government, 1913 and 1915*, Washington, 1916.

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$4.05 in favor of the cities under government by commission. The average per capita receipts from all revenues were $23.68 for the mayor and council cities and $20.84 for the commission cities; while the average per capita payments for the operating expenses of the general departments were $15.06 in the mayor and council municipalities as compared with $12.38 for the places with the commission plan, or a difference of $2.68 to the advantage of the cities with the new form. On the other hand the indebtedness of commission government cities was somewhat greater than that of cities under the aldermanic form, the average per capita net debt in the former group being $41.49 as contrasted with $36.27 for municipalities under the aldermanic system. Whether the larger indebtedness in commission government cities is due to the inheritance of obligations from previous administrations or to the wide use of credit by such cities is an open question. Following is a summary of the table compiled by the Census Bureau:[1] —

Average Per Capita Financial Statistics for 1915 of Eight Mayor and Council Cities as compared with Eight Commission Governed Cities.

Subject.	Cities under Mayor and Council Form.	Cities under Commission Form.
Per capita levy of property taxes,	$16 36	$12 31
Per capita revenue receipts,	23 68	20 84
Per capita expenses of general departments,	15 06	12 38
Per capita net indebtedness,	36 27	41 49

The statistics published by the Bureau of the Census also contain a comparison of the finances of the above-mentioned cities in 1915 as contrasted with the year 1913. According to these tables only one of the mayor and council cities lowered its per capita tax levy during the interim, namely, Peoria, Illinois; in none of the commission government cities was there a decrease in this item. As to the operating expenses of the various departments, none of the aldermanic cities showed a decrease; and Montgomery, Alabama, was the only one in the commission government group which had a saving in this respect.

[1] U. S. Bureau of the Census, *Comparative Financial Statistics of Cities under Council and Commission Government*, Washington, 1916, Table 1, p. 9.

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Among the aldermanic cities there was no instance of a decrease in the per capita net debt, whereas five of the eight commission governed cities — Birmingham, Topeka, Pueblo, Montgomery and Austin — had a smaller per capita net debt in 1915 than in 1913. Taking all of the cities in both groups into consideration, the average per capita figures for the tax levy, operating expenses and indebtedness show an increase between the years 1913 and 1915. The percentage of increase in these items is slightly less, however, in the case of the commission government cities than in the cities under the mayor and council plan, as is shown by the following table:[1] —

Comparison of Average Per Capita Financial Statistics for the Years 1913 and 1915.

	Mayor and Council Form.			Commission Form.		
	1913.	1915.	Per Cent Increase.	1913.	1915.	Per Cent Increase.
Per capita levy of property taxes, . .	$14 73	$16 36	11.0	$11 11	$12 31	10.90
Per capita revenue receipts, . . .	22 78	23 68	3.9	19 53	20 84	6.60
Per capita expenses of general departments,	13 27	15 06	14.0	11 58	12 38	6.80
Per capita net indebtedness, . . .	29 04	36 27	24.8	41 65	41 49	.38[2]

[1] U. S. Bureau of the Census, *Comparative Financial Statistics of Cities under Council and Commission Government*, Washington, 1916, Table 2, pp. 10–11.

[2] Decrease.

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APPENDIX A.

DIGEST OF IOWA COMMISSION GOVERNMENT LAWS.[1]

LAWS OF 1907, CHAPTER 48; LAWS OF 1909, CHAPTER 64; LAWS OF 1913, CHAPTER 102.

COMMISSION ORGANIZATION:

Title: Council.

Number: In cities having between 2,000 and 25,000 population, three, including Mayor.

In cities having over 25,000 population, five, including Mayor.

Term: Two years.

Removal: Recall.

Salary: Population 2,000 to 25,000, $120 for each 1,000 of population; maximum $2,000.

Population 25,000 to 40,000, $1,800.

Population 40,000 to 60,000, $2,500.

Population over 60,000, $3,000.

Commissioner Departments: In cities over 25,000 population: (1) Public Affairs; (2) Accounts and Finance; (3) Public Safety; (4) Streets and Public Improvements; (5) Parks and Public Property. Designation by the Council.

GENERAL COMMISSION POWERS:

"All the executive, legislative and administrative powers formerly exercised by the Mayor, City Council, Board of Public Works, Park Commissioners, Board of Police and Fire Commissioners, Board of Water Works, Trustees, Board of Trustees, Solicitor, Assessor, Treasurer, Auditor, City Engineer, and other executive and administrative officials in a city of the first class and those operating under special charter."

SPECIAL REQUIREMENTS:

Monthly statements of receipts and disbursements.

MAYOR:

Term: Two years.

Salary: Population 2,000 to 25,000, $150 for each 1,000 population; maximum $2,500.

Population 25,000 to 40,000, $2,500.

Population 40,000 to 60,000, $3,000.

Population over 60,000, $3,500.

Removal: Recall.

Powers in Relation to Commission: Presides over Council. No veto power.

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[1] From *Loose Leaf Digest of Short Ballot Charters*, edited by Charles A. Beard for the Short Ballot Organization, New York, 1911-15.

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OTHER ELECTIVE OFFICER:

None.

APPOINTMENTS:

Enumeration: City Clerk, Solicitor, Assessor, Treasurer, Auditor, Civil Engineer, City Physician, Marshal, Chief of Fire Department, Market Master, Street Commissioner, three Library Trustees, and Police Judge in cities which have no Superior Court. In cities of less than 25,000 population the Mayor and Council may dispense with some of these officers at their discretion.

Manner: By majority vote of the Council. Any officer or assistant may be removed by Council except as specially provided.

Civil Service Provisions: Council may establish a Board of three. Appointed by the Council for a term of six years. Partial renewal. The Civil Service provisions of the act apply to all appointive officials and employees of the city except the general officials acting under the immediate supervision of the Commissioner in charge, election officials, and the Mayor's secretary and Assistant Solicitor.

ELECTION PROVISIONS:

Non-partisan primaries; names placed on ballot by petition of twenty-five signatures.

INITIATIVE:

Twenty-five per cent petition (special election).

Ten per cent petition (general election).

REFERENDUM:

Twenty-five per cent petition (special election).

Ten per cent petition (general election).

RECALL:

Twenty-five per cent petition (general or special election).

ABANDONMENT OF ACT:

Operation under the Act may be discontinued after six years by a majority vote of the electors at a special election, based upon a twenty-five per cent petition.

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APPENDIX B.

DIGEST OF CHARTER OF LOWELL.[1]

MASSACHUSETTS ACTS AND RESOLVES, 1911, CHAPTER 645.

COMMISSION ORGANIZATION:

Title: Municipal Council.

Number: Five, including Mayor.

Term: Two years. Partial renewal of the Council each year.

Removal: Recall.

Salary: Twenty-five hundred dollars.

Commissioner Departments:

Public Safety (Mayor), including sub-departments of police, health, poor and legal claims.

Finance, including sub-departments of treasury, auditing, purchasing, assessing, sinking funds, tax collection, registration of voters and city clerk.

Streets and Highways, including sub-departments of highways, street lighting, street watering, sewers and drains, and engineering.

Water Works, including all offices connected with water supply and fire protection.

Public Property and Licenses, including sub-departments of buildings, parks, public grounds, cemeteries, electricity, weights and measures and license commission. Designation to departments is made by the Municipal Council.

"The Municipal Council shall determine the policies to be pursued and the work to be undertaken in each department but each Commissioner shall have full power to carry out the policies or to have the work performed in his department, as directed by the Municipal Council."

GENERAL COMMISSION POWERS:

The powers previously exercised by the Mayor, Aldermen, Common Councilmen, members of the Board of Charities, Board of Trustees of Public Cemeteries and Water Board and Board of Police.

SPECIAL REQUIREMENTS:

Monthly financial statements. No order, resolution, contract, etc., involving a liability of more than $500 may be passed without previous publication, except emergency measures passed by a four-fifths vote.

The Commissioner of Finance is required to have a complete examination of the city's books made annually.

[1] From *Loose Leaf Digest of Short Ballot Charters*, edited by Charles A. Beard for the Short Ballot Organisation, New York, 1911-15.

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MAYOR:

Term: Two years.

Salary: Three thousand dollars.

Removal: Recall.

Powers: No veto power; presides at meetings of the Municipal Council.

APPOINTMENTS:

Enumeration: City Clerk, Treasurer, Collector of Taxes, City Auditor, Purchasing Agent, Superintendent of Streets, Superintendent of Waterworks, City Engineer, City Physician, Board of Health (3), Board of Park Commissioners (5), City Solicitor, Chief of the Fire Department, Superintendent of Police, Sealer of Weights and Measures, Board of Sinking Fund Commissioners (3), Board of Assessors (3), License Commissioners (chosen for a period of six years).

Manner: Enumerated officials by vote of the Municipal Council; subordinates by the Commissioner in charge for an indefinite term.

CIVIL SERVICE PROVISIONS:

Civil Service Provisions: The Civil Service Law of the State applies.

ELECTION PROVISIONS:

Non-partisan nominations; names placed on ballot at preliminary election on petition of twenty-five voters. The two persons receiving the highest number of votes at the preliminary election are the candidates at the annual (or special) election.

INITIATIVE:

Twenty per cent petition (special election).

Ten per cent (general election).

REFERENDUM:

Fifteen per cent petition.

RECALL:

Twenty per cent petition.

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APPENDIX C.

DIGEST OF CHARTER OF BUFFALO.[1]

NEW YORK LAWS, 1914, CHAPTER 217.

COMMISSION ORGANIZATION:

Title: The Council.

Number: Five, including Mayor.

Term: Four years.

Removal: By the Governor.

Salary: Seven thousand dollars.

Commissioner Departments: (1) Public Safety (Mayor), (2) Finance and Accounts, (3) Public Affairs, (4) Public Works, (5) Parks and Public Buildings.

MAYOR:

Term: Four years.

Removal: By the Governor.

Salary: Eight thousand dollars.

Powers and Duties: It is the duty of the Mayor to acquaint himself with the conduct of each of the other city departments and to report thereon to the council with such recommendations as he may deem advisable.

APPOINTMENTS:

Enumeration: (1) Corporation Counsel, Superintendent of Education, Assessor (or Assessors), Street Commissioner, Building Commissioner, Health Commissioner, Chief of Fire Department, Chief of Police, Superintendent of Markets, Superintendent of the Poor, Board of Education, City Engineer, City Treasurer and City Auditor, (2) The Civil Service Commission.

Manner: Enumerated officers in group (1) by the Council, subject to removal by them at any time; deputies and subordinates by the Council, on the nomination of the councilman in charge of the department.

Civil Service Provisions: The Civil Service Commission is appointed by the Council for a term of four years and its members are removable upon charges and after a hearing.

ELECTION PROVISIONS:

Non-partisan primaries and elections. Names placed on primary ballot on petition of three hundred (300) electors. Candidates equal to twice the number of vacancies to be filled, for Commissioner and Mayor respectively are the candidates at the regular election.

[1] From *Loose Leaf Digest of Short Ballot Charters*, edited by Charles A. Beard for the Short Ballot Organization, New York, 1911-15.

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INITIATIVE:

No provisions.

REFERENDUM:

Five per cent petition (special election, unless a general election is to be held within ninety days). Not more than one special election shall be held within a period of six months.

RECALL:

No provisions.

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APPENDIX D.

I. REFERENCES TO GENERAL COMMISSION GOVERNMENT ACTS.

A.— Permissive Acts.

STATE.	References to Charter Law.	Number of Commissioners.[1]
Arkansas,	Laws of 1913, Act No. 13, 48–88,	5*
Idaho,	Laws of 1911, Ch. 82,	5
Illinois,	Hurd's Revised Statutes of Ill., 1915–16, Ch. 24, Art. XIII, 330–356,	5
Iowa,	Laws of 1907, Ch. 48, for cities over 25,000,	5
	Laws of 1909, Ch. 64, extending commission government to cities over 7,000,	3
	Laws of 1913, Ch. 102, extending commission government to cities over 2,000,	3
	Laws of 1911, Ch. 52, 53, 54,	–
Kansas,	Laws of 1907, Ch. 114, for cities of first class,	5
	Laws of 1909, Ch. 82, for cities of second class,	3
	Laws of 1913, Ch. 128, for cities of third class,	3
Kentucky,	Laws of 1910, Ch. 50, for cities of second class,	5
	Laws of 1914, Ch. 92, for cities of third class,	3
	Laws of 1914, Ch. 77, for cities of fourth class,	5
Louisiana,	Laws of 1910, Act No. 302, 512–520,	3 or 5
	Laws of 1912, Act No. 207, 425–435,	3 or 5*
Mississippi,	Laws of 1908, Ch. 108,	3 or 5
	Laws of 1912, Ch. 120,	3
	Laws of 1914, Ch. 158 (provision for initiative, referendum and recall),	–
Missouri,	Laws of 1913, 517–533, for cities of third class,	3 or 5
Montana,	1915, Supplement to Revised Codes, 1118–1134,	3 or 5
Nebraska,	Laws of 1911, Ch. 24,	3, 5 or 7
New Jersey,	Laws of 1911, Ch. 221,	3 or 5
	Laws of 1912, Ch. 48,	3 or 5
New Mexico,	New Mexico Statutes annotated, 1915, Sects. 3781–3795,	3
North Dakota,	Compiled Laws of North Dakota, 1913, Vol. I, Ch. 45, Sects. 3771–3834, and Ch. 46, Sects. 3835–3839,	5
South Carolina,	Laws of 1910, 523–538,	5
	Laws of 1912, 793,	5
South Dakota,	Compiled laws of South Dakota, 1913, Vol. I., 322–352 aj.,	3 or 5
Tennessee,	Public Acts of 1913, Ch. 49,	3 or 5
Texas,	General Laws of 1909, Ch. 106,	3
	General Laws of 1913, Ch. 21,	3
Washington,	Remington's Codes and Statutes, 1915, Vol. II, Ch. XI-A, 2889–2901,	3
Wisconsin,	Wisconsin Statutes (Comp.), 1915, Ch. 40–41, Sects. 925M–301 to 925M–319,	3
Wyoming,	Laws of 1911, Ch. 84,	3
	Laws of 1913, Ch. 113,	3

[1] An asterisk (*) after "Number of Commissioners" indicates that they are elected to specific departments. In all other cases commissioners are assigned to departments after election.

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B. — Obligatory Acts.

State.	References to Charter Law.	Number of Commissioners.[1]
Alabama,	General Acts, 1911, 289–315,	5
	General Acts, 1915, 789–807,	5
Missouri,	Laws of 1913, 420–516, applies to all cities of second class (30,000–75,000),	5*
Pennsylvania,	Laws of 1913, Act No. 367, 568, applies to all cities except Philadelphia, Pittsburgh and Scranton,	5
Utah,	Laws of 1911, Ch. 125, applies to all cities of first and second class,	3 or 5

II. Optional Charter Laws. One of Plans provides for Commission Government.

Massachusetts,	Acts and Resolves of Massachusetts, 1915, Ch. 267,	5*
New York,	Laws of New York, 1914, Vol. III, Ch. 444,	3 or 5
North Carolina,	An Act approved March 5, 1917,	3
Ohio,	Laws of Ohio, 1913, 767–786,	3 or 5
Virginia,	Laws of Virginia, 1914, Ch. 94,	3 or 5

[1] An asterisk (*) after "Number of Commissioners" indicates that they are elected to specific departments. In all other cases commissioners are assigned to departments after election.

III. States with Home Rule. Cities may draw up their Own Charters providing for Commission Government.

Arizona.
California.
Colorado.
Minnesota.
Michigan.
Missouri.
Nebraska.
Ohio.
Oklahoma.
Oregon.
Texas.
Washington.

IV. States in which Commission Government has been provided for only by Special Legislative Charters.

Florida.
Georgia.
Maine.
Maryland.
West Virginia.

V. States which have no Commission Government Cities

Delaware.
Indiana.
New Hampshire.
Rhode Island.
Vermont.

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APPENDIX E.

LIST OF COMMISSION GOVERNMENT CITIES.[1]

I. *Cities over 200,000, Five in Number.*

CITY.	Population.	Date Operative.	CITY.	Population.	Date Operative.
Buffalo, N. Y.,	457,723	1916	Jersey City, N. J.,	293,403	1913
New Orleans, La.,	361,221	1912	Portland, Ore.,	259,582	1913
St. Paul, Minn.,	236,766	1914			

II. *Cities of from 100,000 to 200,000, Fourteen in Number.*

Lowell, Mass.,	111,004	1912	Nashville, Tenn.,	114,899	1913
Oakland, Cal.,	186,902	1911	Dallas, Tex.,	113,525	1907
Birmingham, Ala.,	164,165	1911	Houston, Tex.,	104,726	1905
Memphis, Tenn.,	143,231	1910	Salt Lake City, Utah,	109,736	1912
Spokane, Wash.,	135,657	1911	Tacoma, Wash.,	103,418	1910
Omaha, Neb.,	133,274	1912	Trenton, N. J.,	107,228	1911
San Antonio, Tex.,	116,890	1915	Reading, Pa.,	103,361	1913

III. *Cities of from 30,000 to 100,000, Sixty-two in Number.*

Alabama.			*Illinois.*		
Mobile,	55,332	1911	Decatur,	37,859	1911
Montgomery,	42,154	1911	Joliet,	36,934	1915
			Rockford,	52,337	–
California.			Springfield,	58,221	1911
Berkeley,	53,492	1909			
Pasadena,	42,369	1913			
Sacramento,	62,717	1912	*Iowa.*		
San Diego,[2]	48,900	1909	Cedar Rapids,	36,039	1908
			Des Moines,	97,304	1908
Colorado.			Sioux City,	54,470	1910
Colorado Springs,	31,717	1909			
Pueblo,	51,218	1911			
			Kansas.		
Idaho.			Kansas City,	94,271	1910
Boise,	30,338	1912	Topeka,	47,102	1910

[1] Statistics for cities of more than 30,000 are taken from *General Statistics of Cities, 1915*, U. S. Bureau of the Census.

[2] San Diego has recently provided for a "manager of operation," embodying some features of the city-manager plan.

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III. *Cities of from 30,000 to 100,000, Sixty-two in Number* — Con.

City.	Population.	Date Operative.
Kentucky.		
Covington,	55,896	1914
Lexington,	38,819	1912
Newport,	31,517	1912
Louisiana.		
Shreveport,	32,906	1910
Massachusetts.		
Haverhill,	47,071	1909
Lawrence,	95,834	1912
Lynn,	98,207	1911
Michigan.		
Saginaw,	54,401	1914
Minnesota.		
Duluth,	89,331	1913
Missouri.		
Joplin,	32,940	1914
Springfield,	39,099	1916
Montana.		
Butte,	42,497	–
Nebraska.		
Lincoln,	45,515	1913
New Jersey.		
Atlantic City,	53,952	1912
Bayonne,	66,041	1915
Hoboken,	75,364	1915
Orange,	31,968	1914
Passaic,	67,643	1911
West Hoboken,	40,647	–
Oklahoma.		
Muskogee,	39,786	1911
Oklahoma City,	85,858	1911
Pennsylvania.		
Allentown,	60,297	1913
Altoona,	56,553	1913 [1]
Chester,	40,474	1913
Erie,	72,401	1913
Harrisburg,	69,493	1913
Johnstown,	64,642	1913
McKeesport,	45,965	1913
New Castle,	39,569	1913
Wilkes-Barre,	73,660	1913
Williamsport,	33,181	1913
York,	49,430	1913
South Carolina.		
Columbia,	33,506	1910
Tennessee.		
Chattanooga,	56,702	1911
Knoxville,	37,955	1912
Texas.		
Austin,	33,218	1909
El Paso,	50,113	1907
Fort Worth,	94,494	1907
Galveston,	40,420	1901
Waco,	32,285	1909
Washington.		
Everett,	32,048	1912
West Virginia.		
Huntington,	42,543	1909
Wisconsin.		
Oshkosh,	34,976	1912
Superior,	44,109	1912

[1] Under city-manager plan since January 1, 1918.

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IV. *Cities of Less than 30,000, Two Hundred and Sixty-eight in Number.*[1]

Alabama.
Cordova.
Florence.
Hartselle.
Sheffield.
Talladega.
Tuscaloosa.

Arkansas.
Fort Smith.

California.
Modesto.
Monterey.
Napa.
Riverside.
San Luis Obispo.
San Mateo.
Santa Cruz.
Santa Monica.
Stockton.
Vallejo.

Colorado.
Colorado City.
Durango.
Fort Collins.
Grand Junction.

Florida.
Orlando.
Pensacola.
St. Petersburg.

Georgia.
Cartersville.

Idaho.
Lewiston.

Illinois.
Bloomington.
Cairo.
Carbondale.
Clinton.
Coal City.
Decatur.
Dixon.
Effingham.
Elgin.
Flora.
Forest Park.
Hamilton.
Harrisburg.
Harvey.
Highland Park.
Hillsboro.
Jacksonville.
Kewanee.
Lincoln.
Marseilles.
Murphysboro.
Moline.
Ottawa.
Pekin.
Rochelle.
Rock Island.
Spring Valley.
Sterling.
Waukegan.

Iowa.
Burlington.
Fort Dodge.
Keokuk.
Marshalltown.
Mason City.
Ottumwa.

Kansas.
Anthony.
Arkansas City.
Caldwell.
Chanute.
Cherryvale.
Coffeyville.
Council Grove.
Dodge City.
Emporia.
Eureka.
Fort Scott.
Garden City.
Garnett.
Girard.
Great Bend.
Hiawatha.
Holton.
Hutchinson.
Independence.
Iola.
Junction City.
Kingman.
Lawrence.
Leavenworth.
Manhattan.
Marion.
McPherson.
Neodesha.
Newton.
Olathe.
Osawatomie.
Ottawa.
Parsons.
Pittsburgh.
Pratt.
Wellington.

Kentucky.
Harrodsburg.
Hopkinsville.
Middlesboro.
Paducah.

Louisiana.
Alexandria.
Baton Rouge.
Donaldsville.
Lafayette.
Natchitoches.
Hammond.
Jennings.
Lake Charles.
New Iberia.

Maine.
Gardiner.

Maryland.
Cumberland.

Massachusetts.
Gloucester.

Michigan.
Adrian.
Battle Creek.
Fremont.
Grand Haven.
Harbor Beach.
Marquette.
Monroe.
Owosso.
Pontiac.
Port Huron.
Traverse City.
Wyandotte.

Minnesota.
Eveleth.
Faribault.
Mankato.

Mississippi.
Clarksdale.
Greenwood.
Gulfport.
Hattiesburg.

[1] Information regarding cities under 30,000 obtained from *National Municipal Review*, *American Year Book*, *Digest of Short Ballot Charters*, edited by Charles A. Beard for the Short Ballot Organization, E. S. Bradford's *Commission Government in American Cities* (New York, 1911), and other ources.

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IV. *Cities of Less than 30,000, Two Hundred and Seventy in Number* — Con.

Mississippi — Con.
Jackson.
Laurel.
Meridian.
Vicksburg.

Missouri.
Aurora.
Kirksville.
Monette.
West Plains.

Montana.
Helena.
Missoula.

Nebraska.
Beatrice.
Nebraska City.

New Jersey.
Belleville.
Beverly.
Bordentown.
Haddonfield.
Hawthorne.
Irvington.
Long Branch.
Millville.
New Brunswick.
Nutley.
Ocean City.
Phillipsburg.
Ridgefield Park.
Ridgewood.
Vineland.
Wallington.

New Mexico.
Las Vegas.

New York.
Beacon.
Mechanicsville.
Saratoga Springs.

North Carolina.
Asheville.
Greensboro.
High Point.
Raleigh.
Wilmington.

North Dakota.
Bismarck.
Devil's Lake.
Fargo.
Mandan.
Minot.
Williston.

Ohio.
Middletown.

Oklahoma.
Ada.
Ardmore.
Bartlesville.
Duncan.
El Reno.
Enid.
Guthrie.
Holdenville.
Lawton.
McAlester.
Miami.
Okmulgee.
Purcell.
Sapulpa.
Tulsa.
Wagoner.

Oregon.
Baker.

Pennsylvania.
Beaver Falls.
Bradford.
Carbondale.
Connellsville.
Corry.
Easton.
Franklin.
Hazleton.
Lancaster.
Lebanon.
Lock Haven.
Meadville.
Oil City.
Pittston.
Pottsville.
South Bethlehem.

South Carolina.
Florence.
Orangeburg.
Spartanburg.

South Dakota.
Aberdeen.
Canton.
Chamberlain.
Dell Rapids.
Huron.
Lead.
Madison.
Pierre.
Rapid City.
Sioux Falls.
Vermillion.
Watertown.
Yankton.

Tennessee.
Bristol.
La Follette.
Lebanon.
Memphis.
Murfreesboro.
Springfield.

Texas.
Aransas Pass.
Coleman.
Corpus Christi.
Denison.
Greenville.
Kennedy.
Marble Falls.
Marshall.
McKinney.
Palestine.
Port Arthur.
Port Lavaca.

Utah.
Logan.
Murray.
Ogden.
Provo.

Washington.
Centralia.
Chehalis.
Hoquiam.
North Yakima.
Walla Walla.

West Virginia.
Bluefield.
Fairmont.
Grafton.
Parkersburg.

Wisconsin.
Antigo.
Appleton.
Ashland.
Eau Claire.
Fond du Lac.
Janesville.
Ladysmith.
Menominie.
Portage.
Rice Lake.

Wyoming.
Cheyenne.
Sheridan.

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BULLETIN No. 13

THE CITY-MANAGER PLAN OF MUNICIPAL GOVERNMENT

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THE CITY-MANAGER PLAN OF MUNICIPAL GOVERNMENT.

I. Systems of Municipal Government in the United States.

There are at the present time three general types of municipal government in the United States: namely, the mayor and council form, the commission form and the city-manager form. Under the mayor and council system, which was the first to develop, the powers of government are divided between a mayor as the chief executive, a council of one or two houses elected usually by wards, and a number of independent administrative officials such as the city clerk, treasurer, auditor, etc., who as a general rule are elected by the people or by the council. In other words the mayor and council plan in its usual form has followed the customary American scheme of organization which is based on the principle of separation of powers or a system of checks and balances.

The mayor and council form of municipal government prevailed universally in this country until 1903, when Galveston, Texas, following a disastrous tidal wave, adopted a new system known as commission government. Under the commission plan as it has developed since its beginning in Galveston, the autonomous mayor, council and other independent departments are abolished and all the powers of government except the administration of the schools are vested in a small, popularly-elected commission of from five to seven members. Each member individually has charge of one of the administrative departments of the city, while collectively they enact ordinances and regulations for the municipality. One of the commissioners is usually given the title of mayor, but he has no greater powers than any of the others, except that he presides over meetings of the commission, represents the city in a ceremonial capacity, etc.

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Since its adoption in Galveston in 1903, commission government has spread rapidly throughout the country, until to-day every State except Connecticut, Delaware, Indiana, New Hampshire and Vermont has one or more commission government cities. There are in all about three hundred and fifty cities which are operating under the new system.

II. The City-Manager Movement.

Definition.

The most recent development in municipal government has been the city-manager plan, which carries the concentration of administrative responsibility one step farther than does commission government, and provides an apex for the local administration. As noted above one of the essential features of commission government is the division of the administrative work among the various members of the commission. Under the city-manager plan the small commission elected at large is continued for legislative and supervisory purposes, but instead of making each commissioner the head of a particular phase of the city's affairs, all administrative details are turned over to a specially trained administrator appointed by the commission. The city-manager plan may be defined, therefore, as a form of municipal government in which all the corporate powers having to do with the determination of policy and the general direction of municipal affairs are vested in a small group of elective officials constituting a council or commission elected usually at large on a non-partisan ballot, while the administrative functions are concentrated in a single executive official appointed by the commission on the basis of professional qualifications and designated as the city manager. Such a plan is very similar to the method of organization commonly employed in corporations, the commission corresponding to the board of directors and the city manager to the president or general manager of the corporation.

In addition to the above fundamental elements, city-manager charters also provide for the initiative, referendum and recall, while most of them also have provisions for civil service, for the proper management of the city's finances, and for the control of public utilities.

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History and Development.

Staunton, Virginia, in 1908, was the first city in the United States to provide for a city manager. This was done merely by local ordinance without any charter revision. The old mayor and council form was retained, but the greater part of the administrative work was turned over to a special official known as the "general-manager."[1] Five years later, in 1913, Sumter, South Carolina, commenced operation under a legislative charter which contained most of the features of the city-manager plan.[2] It remained, however, for Dayton, Ohio, following a serious flood in 1913, to be the first city to adopt a complete city-manager charter containing all of the essential features outlined above. This charter went into effect on January 1, 1914.

Since that date a number of other cities have taken action on the matter, until to-day there are about 120 cities which have either adopted complete city-manager charters, as in Dayton, or have provided for a city manager by ordinance, as in Staunton. So far the city-manager movement has been confined very largely to the smaller cities of the country. Only two cities of more than one hundred thousand inhabitants — Dayton, Ohio, and Grand Rapids, Michigan — have come under this plan, each having a population of about one hundred and twenty-three thousand. Other cities of fairly large size are Wichita, Kansas, 64,972; Springfield, Ohio, 50,058; Wheeling, West Virginia, 42,957; Portsmouth, Virginia, 37,000; Niagara Falls, New York, 35,127; San José, California, 37,010; Jackson, Michigan, 34,202; Watertown, New York, 26,730; and Newburgh, New York, 27,805. Most of the city-manager cities, however, are places with populations of from two thousand to twenty-five thousand, thus showing that the movement has been chiefly a small city development.[3]

Methods of Adoption.

The city-manager plan has been established in the various municipalities by four different methods: namely, home-rule charters, special legislative charters, general city-manager

[1] S. D. Holsinger, *General Manager Plan of Government of Staunton, Virginia*, 7–8.
[2] *Laws of South Carolina, 1913*, Act No. 453. In effect January 1, 1913.
[3] For a list of city-manager cities see Appendix C.

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charter laws or codes, and optional charter acts. In this connection it should be made clear that no State has provided in its constitution for the city-manager plan as such, and that the movement has been the result of charter revision and legislative action. Twelve State constitutions, however, contain home-rule provisions which give to cities the right to frame and adopt their own charters, and a number of cities in such States as California, Ohio, Michigan and Texas, acting under these grants of power, have drawn up home-rule charters establishing the city-manager system.

In addition to the home-rule charter plan, the next most important method of providing for the city-manager scheme is by special charter acts passed by the Legislature for each individual city. Then in the five States of Idaho, Iowa, Kansas, Louisiana and Montana general city-manager codes have been enacted, the provisions of which may be adopted by any city by popular vote.[1] Very similar to the general city-manager laws are the optional charter acts of Massachusetts, New York, North Carolina, Ohio and Virginia, which enable a city to adopt any one of several plans of government, including the manager form.[2]

Then, too, a number of municipalities such as Staunton and Fredericksburg, Virginia, have a modified plan of government by a manager. In these cities the aldermanic form of organization is retained, and the only change is that certain of the administrative functions and duties of the city are assigned to a general superintendent or manager whose position has been provided for merely by ordinance of the city council. Such cities, of course, do not possess all the essentials of the orthodox manager plan, such as the small commission, initiative and referendum, and so on. Also the organization is less stable than if it were provided by charter or by statute, since it may be abolished at any time by vote of the council. Strictly speaking, these cities should be considered as having only a partial or modified city-manager plan.

[1] Reference to laws of Idaho, Kansas, Iowa and Montana in *National Municipal Review*, VI, 416-417 (May, 1917); Louisiana, *Ibid.*, VII, 530 (Sept., 1918).

[2] *General Acts of Massachusetts, 1915*, Chap. 267; *Laws of New York, 1914*, Chap. 444; *Laws of Ohio, 1913*, 767-786; North Carolina Legislature, "An Act to provide for the organization and government of cities," March, 1917; *Laws of Virginia, 1914*, Chap. 94.

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III. The Dayton City-Manager Plan.

Considerable variation as to details is found in the several city-manager charters, but only a few of the points of difference are of essential importance. Since the Dayton charter has been the model for other municipalities, it is believed that an analysis of its provisions will best serve as a method of making clear the fundamental features of the system in general.[1]

The Commission.

Under the Dayton charter, provision is made for a commission of five citizens elected at large by the people for a term of four years, either two or three commissioners being chosen every two years so as to make the commission a continuous body. Nominations are made at a non-partisan primary and any qualified voter is entitled to have his name placed on the primary ballot by filing a petition signed by at least two per cent of the registered voters. The names receiving the largest number of votes at the primary are placed on the final ballot without party designation,[2] and the two or three candidates, as the case may be, who obtain the highest votes at the election are declared elected. The commissioner who receives the greatest number of votes is designated as mayor,[3] but he is little more than a figurehead and has no special powers except to preside at meetings of the commission and to act as the official head of the city for ceremonial purposes and for the purpose of serving civil processes against the city. The salary of the mayor is fixed at $1,800 and that of each commissioner at $1,200.[4]

The duties of the commission are to enact ordinances and regulations for the government of the city, to raise taxes and vote appropriations, create or abolish departments, investigate the financial transactions or the official acts of any officer or department, and finally the very important function of appointing the city-manager.

---

[1] Charter for the city of Dayton adopted by the people August 12, 1913. For summary see Appendix A.

[2] The number of candidates who are entitled to have their names placed on the final ballot is limited to twice the number to be elected; *i.e.*, if three candidates are to be chosen, the names of the six receiving the highest votes at the primary are placed on the ballot for final election. See Dayton Charter, Sects. 4–12.

[3] The mayor is the candidate who receives the largest vote at the election at which three commissioners are chosen.

[4] Dayton Charter, Sects. 36–38.

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The City Manager.

From the above description of the commission's powers and duties, it is seen that this body does not have anything directly to do with the actual management of the various departments, but delegates these responsibilities to its appointee, the city manager. The city manager is the administrative head of the municipality and is responsible to the commission for the efficient administration of all the departments under his charge. He is appointed without regard to his political beliefs, is not required to be a resident of the city of Dayton, and receives such salary as the commission may determine, which was $12,500 at first and is now $7,500. The city manager is not appointed for any definite term, but serves during the pleasure of the commission except that he may be recalled by the people in a manner to be described later. In providing for the recall of the manager, the Dayton charter differs from that of the other cities.[1]

The powers and duties of the city manager may be divided into four groups. (1) First of all, in an advisory capacity, he attends the meetings of the commission with the right to be heard and to make recommendations, but not to vote. In this connection it is his duty to keep the commission informed as to the financial condition and needs of the city. (2) Secondly, he must see that all laws and ordinances are enforced. (3) In the third place, he appoints all directors of departments and subordinate employees subject, however, in the case of minor officials, to civil service regulations, and may suspend or dismiss any of them for proper cause. In the performance of these functions he assigns to each official the work which he is expected to carry on. (4) Finally the city manager prepares the annual budget of estimated revenues and expenditures which is submitted to the commission for action, and is the general supervisor of all the work done in the several departments. In addition to these duties which are specifically provided for in the charter, the city manager is required to perform such other duties as may be prescribed by the commission.[2]

[1] Dayton Charter, Sects. 13–20.
[2] *Ibid.*, Sects. 47–50.

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Administrative Departments.

Under the supervision of the city manager in Dayton there are five departments, — the department of finance, the department of law, the department of public welfare, the department of public safety, and the department of public service, — each in charge of a director appointed by and responsible to the city manager in all matters.[1] The heads of departments are not under civil service, but the appointments of all other subordinate officials except the deputy directors are made after competitive examinations. The charter provides for a civil service board of three to be appointed by the commission for the purpose of conducting such examinations and for administering the merit system in general.[2]

Initiative, Referendum and Recall.

In addition to the above essential features, the Dayton charter provides also for the initiative, the referendum and the recall. Upon petition of ten per cent of the total number of registered voters, an ordinance may be drawn up and presented to the commission whose duty it is to take action on the same within thirty days. If the commission rejects the proposed ordinance or amends it, the people may demand its submission to a popular vote by filing a petition signed by an additional fifteen per cent of the voters. It is further provided that any ordinance enacted by the commission must be submitted to a referendum vote upon presentation of a petition signed by twenty-five per cent of the registered voters.[3]

Provision is also made in the Dayton charter for the popular recall of members of the commission and of the city manager. Whenever a petition is filed by at least twenty-five per cent of the registered voters demanding the removal of a commissioner or the manager, a recall election must be held within sixty days, provided the official against whom charges are made does not resign in the meantime. At the recall election a vote is taken on the question as to whether the official should be recalled and also upon the names of candidates to succeed him in case a

[1] Dayton Charter, Sects. 51–87.
[2] *Ibid.*, Sects. 93–107.
[3] *Ibid.*, Sects. 21–35.

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majority of the voters are in favor of such recall. Unlike the usual arrangement, the name of the person whose removal is sought may not appear on the recall ballot as a candidate to succeed himself.[1]

IV. The City-Manager Plan in Other Cities.

In General.

As a general rule the charters of other city-manager municipalities provide for a plan of government which is very similar to that of Dayton, with the exception that in a number of the smaller cities provision is not made for such a highly centralized departmental organization. In some cities, such as Ashtabula, Ohio, for example, the charter provides for separate directors for only a part of the departments, and stipulates that the city manager shall be the acting head of all other departments unless otherwise ordered by the commission.[2]

The charters of some of the cities also differ from that of Dayton in that they do not give the city manager the entire responsibility for administering the city's finances. This tendency is illustrated in the Springfield, Ohio, charter, where the city auditor, treasurer and purchasing agent are appointed by the commission instead of by the city manager, and in the charter of Grand Rapids, Michigan, where the comptroller is elected by the people and the city treasurer and city assessors by the commission.[3] It is not unusual to find also that the city clerk and sometimes the solicitor are appointed by the commission instead of by the manager. The argument advanced in favor of the decentralization of financial administration is that it places a check upon the city manager in the expenditure of funds.

The Ashtabula Plan.

As explained above, Dayton and most of the other cities provide for the election of members of the commission from the city at large. This method has been criticized by some persons on the ground that it does not provide for the proper reflection of minority wishes. Ashtabula, Ohio, has attempted to solve

[1] Dayton Charter, Sects. 13–20.

[2] Charter of the City of Ashtabula, Sect. 29.

[3] Charter of Springfield, Ohio, Sects. 19–23; Charter of Grand Rapids, Michigan, Title II, Sects. 2, 3.

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the problem by providing in its charter for the Hare system of proportional representation, the purpose of which is to give to any group of electors which can control an appreciable block of votes a number of representatives roughly in proportion to its relative strength.[1]

Under the Ashtabula charter there are seven members on the council. The procedure of election as described by Dr. A. R. Hatton is as follows: At the left of each name on the ballot "is a square in which the voter marks his preference by placing the figure 1 opposite the name of his first choice, 2 opposite the name of his second choice and so on. He may mark as many preferences as he pleases, but a ballot can count for only one candidate. To determine the number of votes necessary for election to the council the total number of valid ballots is divided by eight, and the whole number next higher than this quotient is taken as the number of votes required to elect."[2] For example, at the first election in November, 1915, the total number of valid ballots cast was 2,972, which number divided by eight gives a quotient of 372, or the number of votes required for election. The number so established is known as the "quota."

In counting the votes the process is as follows:

> If upon counting the first-choice votes any candidate is found to have received the full quota or more, he is at once declared elected. Any votes which such a candidate has above the quota are then transferred, according to the highest available choice marked on such ballots, to candidates not already elected. It may happen that several candidates receive more than the necessary quota. In that case the surplus votes are transferred to other candidates in the order of size of the surplus.
>
> Whenever during the transfer of votes the number of ballots for any candidate equals the quota, he is declared elected and no further votes are transferred to him. When all surplus votes are transferred, if enough candidates to fill all the places have not reached the quota, the lowest on the list is dropped and his votes are transferred in like manner. This process continues until the required number of candidates have received the quota, or until, by dropping the low men, only seven remain.[3]

---

[1] Charter of Ashtabula, Ohio, Sects. 46–1, 46–2. Amendment adopted August 10, 1915.

[2] Professor A. R. Hatton, "The Ashtabula Plan," *National Municipal Review*, V, 56–65 (1916).

[3] *Ibid.*, 59–60 (1916). As a result of the first election under this plan it is reported that the business, professional and laboring interests were represented on the commission, also the various nationalities and political parties. *Ibid.*, 61. The system has not been adopted by any other American city and has been in operation in Ashtabula for too short a period to draw any definite conclusions as to its workings.

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V. The City-Manager Plan in Massachusetts.

The Optional Charter Law.

Geographically most of the municipalities under the city-manager plan are to be found outside of New England, especially in the west and southwest. Auburn, Maine, was granted a special city-manager charter in 1917, effective January 1, 1918. Massachusetts is the only one of the New England States which has authorized the introduction of the new system by a general law. In 1915 the Legislature of the Commonwealth enacted an optional charter law under which any city may adopt Plan D providing for the city-manager form.[1] Provision is made in this act for a city council of five members elected from the city at large for two years, either two or three members being chosen each year. The councillor receiving the largest number of votes at the election at which three members are elected is given the title of mayor, but has no extraordinary powers except to preside at meetings of the council. The mayor and councillors receive such salaries as may be determined by vote of the council, except that the compensation of the former may not exceed $2,000 per annum and that of the latter $500 each.

The city manager is appointed by the council on the basis of merit alone, holds office during the pleasure of that body, is not required to be a resident of the city when chosen, and has the usual powers and duties assigned to city managers. The initiative and referendum are included, but there is no provision for the recall of either the city manager or members of the council. Waltham is the only city in Massachusetts which has adopted the city manager plan of government as provided for in the optional charter act.

The Norwood Town-Manager Plan.

Although but one city in the Commonwealth has yet adopted Plan D of the optional charter law, the town of Norwood in 1914 obtained a special act from the Legislature authorizing the reorganization of its government so as to provide for a town manager.[2] Under the Norwood plan the town meeting is re-

[1] *General Acts of Massachusetts, 1915*, Chap. 267, Part V, Plan D, Sects. 1-14. See Appendix B.
[2] *Acts and Resolves of Massachusetts, 1914*, Chap. 197.

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tained for the purposes of legislation and the voting of taxes and appropriations. Five selectmen are then elected by the voters for terms of three years each, to have general oversight of town affairs and to appoint a town manager. The act provides for the abolition of a number of independent offices and boards including the water commissioners, sewer commissioners, park commissioners, municipal light board and tree warden, and transfers their duties to the selectmen who in turn appoint a town manager to look after the actual administration of the same.

The powers and duties of the general manager in Norwood are with a few exceptions much the same as in other municipalities under the manager type of government. According to the act providing for the administration of town affairs his functions include the following:

(*a*) To organize, continue or discontinue such divisions or departments from time to time as may be determined by vote of the selectmen, or in the absence of such vote, as may be determined by said general manager to be required for the efficient conduct of his office;

(*b*) To appoint upon merit and fitness alone, and . . . to remove all superintendents or chiefs of departments and all subordinate officers and employees in such departments, and to fix all salaries and wages of all subordinates and employees subject to law. The superintendents or chiefs of departments shall not be removed by the general manager except on five days' notice in writing which shall state the cause of such removal;

(*c*) To exercise control over all such departments or divisions so created, or that may hereafter be created, which shall be made subject to the supervision of said general manager;

(*d*) To attend all regular meetings of the selectmen, and to recommend to the selectmen for adoption such measures requiring action by them or by the town as he may deem necessary or expedient;

(*e*) To keep full and complete records of the doings of his office, and to render as often as may be required by the selectmen a full report of all operations during the period reported on;

(*f*) To keep the selectmen fully advised as to the needs of the town within the scope of his duties, and to furnish the selectmen on or before the thirty-first day of December of each year a careful, detailed estimate in writing of the appropriations required during the next ensuing fiscal year for the proper conduct of all departments of the town under his control;

(*g*) To keep in repair the . . . library and all school and other town buildings and to purchase all supplies for every department of the town . . .;

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(*h*) To perform such other duties, consistent with his office as may be required of him by the by-laws of the town or by vote of the selectmen;

(*i*) To have control and supervision of the department of police of the town, subject, however, to the direction of the selectmen.[1]

In pursuance of this act the town manager has been given charge of the police and fire departments, the care of parks and public buildings, the management of the water and light plants, the construction, repair and maintenance of highways, sewers and bridges, and other work of an engineering nature. But contrary to the practice in most city-manager municipalities, the administration of finances, public health and poor relief has been assigned to authorities other than the manager. The collection and disbursement of funds and the keeping of accounts are under the control of the treasurer and the town accountant appointed by the selectmen. In addition to these two fiscal officers there is a finance commission of three members elected by the voters to prepare the annual budget, investigate all articles in the town warrant requesting the appropriation of money, and to have general oversight of the entire finances of the town. The protection of the health of the community is under the supervision of a popularly elected board of health of three members, while the care of the poor is entrusted to a board of relief appointed by the selectmen.

Thus it is seen that according to the Norwood plan the manager is directly responsible for the supervision of only a part of the departments of the town and that his powers and duties are confined very largely to the administration of public safety and public works, the purchase of supplies, and the general oversight of such other matters as the selectmen may from time to time assign to him.

No provision is made in the Norwood act for the initiative and referendum as such, since the people already have the power of direct legislation through their town meetings. The selectmen, however, are made subject to the recall and an election for the removal of any or all of the selectmen may be called upon petition of two hundred qualified voters. Any

[1] *Acts and Resolves of Massachusetts, 1914*, Chap. 197, Sect. 9.

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selectman whose removal is sought may be a candidate to succeed himself.[1]

The operation of the manager plan in Norwood has attracted the attention of other communities in the State with the result that several towns have been considering the adoption of a similar form of government. In 1917 Winchester, by a vote of 959 to 497, rejected the plan, while Waltham, by a vote of 1,882 to 1,503, accepted it. A bill was also introduced in the 1917 session of the Legislature providing for an optional town charter act somewhat similar to the optional charter law for cities, which would permit any town to adopt one of several plans, including the manager system.[2] This bill did not become a law, and an order creating a recess committee to make a further study of the matter and to report its findings at the next session of the Legislature was rejected.

VI. Conclusion.

Since the city-manager plan has been in operation for only a few years, it is difficult to state any definite conclusions as to its actual results. Letters and reports, however, from officials in nine representative cities — Dayton (123,794); Springfield, Ohio (50,058); Jackson, Michigan (34,202); Sherman, Texas (12,412); Bakersfield, California (12,727); Manistee, Michigan (12,381); Staunton, Virginia (10,604); Amarillo, Texas (10,000); and La Grande, Oregon (7,000) — show that central purchasing departments have been established in eight of the nine places; that in all but one the accounting methods have been reorganized; and that in all but four new budget systems have been introduced. At the time the above information was obtained none of the cities had found it necessary to issue bonds for current expenses incurred during the city-manager administration. The following is a tabular view of the financial administration of the above-mentioned cities under the city-manager plan: [3]

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[1] For the workings of town-manager plan in Norwood see *Forty-fifth Annual Report of the Town of Norwood, 1916*, 103–132; and also *Second Annual Report of the Proceedings of the City Managers' Association*, held in Dayton, 1915, 81–82.

[2] *House Bill No. 1080*, Massachusetts General Court, 1917, "An Act to modify town government and to provide for a limited town meeting."

[3] Information obtained from questionnaires sent to city managers in 1915–16 by the Bureau for Research in Municipal Government, Harvard University, and from annual reports of city managers, 1914–16.

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City.	Financial Condition.	Tax Rate.	Accounting Methods.	Budget Methods.	Purchase of Supplies.
Dayton, Ohio.	Expenditures kept within revenue. Has not been necessary to issue bonds for payment of current expenses since the first month when bonds were issued to pay expenses incurred during the flood of 1913. Per capita expenses of general departments during 1915 show 5 per cent increase over those for last year under aldermanic form; per capita net debt, 19 per cent increase; per capita revenue receipts 32 per cent increase.	- - -	Completely centralized system of accounting installed. Based on principles laid down in Mets's "Handbook of Municipal Accounting." Cost accounting in the matter of street cleaning, street repairing, garbage and ash removal, maintenance of horses and automobiles, etc.	Budget estimates submitted to the commission by the city manager; segregated type of budget adopted with a uniform classification of all items according to department, character and object. A budget code with a uniform classification of items has been provided.	Central purchasing agent provided for.
Springfield, Ohio.	Floating debt of $120,000 liquidated in two years. Not necessary to issue bonds for payment of current expenses. Per capita expenses of general departments for 1915 show 1 per cent increase over last year under aldermanic form; per capita net debt 10 per cent increase; per capita revenue receipts 20 per cent increase.	Tax rate lowered from $1.50 to $1.31 per $100 of valuation, or decrease of $0.19 per $100.	Completely centralised, double entry system of accounting installed.	Budget estimates submitted to the commission by the city manager. Segregated type of budget adopted.	All supplies purchased by central purchasing department.

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Jackson, Michigan.	Outstanding bonded indebtedness reduced by $50,000 and floating indebtedness of $14,000 paid off. Sinking fund balance increased from $27,000 to $45,000. Bonds have not been issued for current expenses.	Tax rate not raised.	Complete double entry system of accounting installed. All accounts kept by Finance Department, except for City Hospital and Park Trustees, who use uniform system.	Budget estimates submitted by the city manager. Segregated type of budget adopted. Uniform classification of items according to department and object of expenditure.	City manager acts as purchasing agent.
Sherman, Texas.	No bonds issued for payment of current expenses.	– – –	Improved system installed.	Budget of segregated type.	Central purchasing agent.
Manistee, Michigan.	Bonds not issued to meet current expenses.	Tax rate for city purposes lowered from $16.62 per $1,000 valuation during 1913 to $13.51 in 1915–16, or decrease of $2.61 per $1,000.	City manager reports the installation of an improved system of accounting.	City manager presents budget estimates to commission. Question as to form of budget unanswered.	City manager purchases all supplies.
Amarillo, Texas.	$20,000 delinquent taxes collected; had been on books many years. "Have not found it necessary to borrow any money under city-manager plan; not even in anticipation of taxes" (1915).	– – –	New system of accounting established.	City manager presents budget items to commission. Modified "lump sum" type of budget.	City manager purchases most of supplies.

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City.	Financial Condition.	Tax Rate.	Accounting Methods.	Budget Methods.	Purchase of Supplies.
La Grande, Oregon.	Floating indebtedness of $110,000 from previous administration reduced by almost one half in two years. Water and street departments put on a cash paying basis. No bonds for current expenses.	Tax rate has remained the same.	No changes in accounting system (1915).	Budget making not centralised. Lump-sum type of budget (1915).	Central purchasing of supplies not established (1915).
Bakersfield, California.	Bonds have not been issued to pay current expenses.	– – –	New system adopted which provides for a full segregation of all items of expense in each department.	City manager presents budget estimates to the commission.	City manager purchases all supplies.
Staunton, Virginia.	Bonds bearing high rate of interest have been taken up with new bonds at lower rate. No money has been borrowed for current expenses. All improvements in 1915–16 paid out of ordinary income.	"Tax rate is one of the lowest in Virginia cities of the first class."	Improved double entry system installed.	City manager presents budget estimates to the commission. Segregated type of budget.	Central purchase of all supplies.

Note. — "Achievement Reports" from sixty-five city-manager municipalities appear in the Fourth Yearbook of the City Managers' Association, and give considerable data as to the financial and other results of the city-manager plan.

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APPENDIX A.

DIGEST OF THE CHARTER OF DAYTON.[1]

Home Rule Charter adopted by the people in 1913.

GOVERNING BODY:

Title: Commission.
Number: Five.
Term: Four years. Partial renewal biennially.
Removal: Recall.
Salary: Twelve hundred dollars (Mayor, $1,800).

MAYOR:

SEC. 36. The mayor shall be that member of the commission who, at the regular municipal election at which the three commissioners were elected, received the highest number of votes, except that at the first regular municipal election held under this charter the mayor shall be the commissioner receiving the highest number of votes. . . . The mayor shall be the presiding officer, except that in his absence a president pro tempore may be chosen. The mayor shall exercise such powers conferred and perform all duties imposed upon him by this charter, the ordinances of the city and the laws of the State. He shall be recognized as the official head of the city by the courts for the purpose of serving civil processes, by the Governor for the purposes of the military law, and for all ceremonial purposes.

CITY MANAGER:

SEC. 47. The commission shall appoint a city manager who shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments. He shall be appointed without regard to his political beliefs and may or may not be a resident of the city of Dayton when appointed. He shall hold office at the will of the commission and shall be subject to recall as herein provided.

SEC. 48. *Powers and Duties of the City Manager.* The powers and duties of the city manager shall be

(*a*) To see that the laws and ordinances are enforced.

[1] From *Loose Leaf Digest of Short Ballot Charters*, edited by Charles A. Beard for the Short Ballot Organization, New York, 1911–15.

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CITY MANAGER — *Concluded.*

SEC. 48. *Powers and Duties of the City Manager* — Concluded.

(*b*) To appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone, and in the classified service all appointments and removals to be subject to the civil service provisions of this charter;

(*c*) To exercise control over all departments and divisions created herein or that may be hereafter created by the commission;

(*d*) To attend all meetings of the commission, with the right to take part in the discussion but having no vote;

(*e*) To recommend to the commission for adoption such measures as he may deem necessary or expedient;

(*f*) To keep the commission fully advised as to the financial condition and needs of the city; and

(*g*) To perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the commission.

SEC. 49. *Salary.* The city manager shall receive such salary as may be fixed by ordinance of the commission.

APPOINTMENTS:

Enumeration: (1) City Manager, Civil Service Board, Clerk of the Commission; (2) City Attorney, Director of Public Service, Director of Public Welfare, Director of Public Safety, Director of Finance; (3) The following subordinate officers: Health Officer, Chief of Police, Fire Chief, City Accountant, City Treasurer, City Purchasing Agent.

Manner: Group (1) by the Commission; Groups (2) and (3) by the City Manager.

Civil Service Provisions: The following officers are in the unclassified service: Those elected by the people, the City Manager, the heads of departments and divisions of departments, members of appointive boards, the Clerk of the Commission, and the deputies and secretaries of the City Manager, and one assistant or deputy and one secretary for each department.

All other positions are in the classified service in the competitive, non-competitive or labor divisions, and are under the regulations of the Civil Service Board.

ELECTION PROVISIONS:

Non-partisan nominations and elections. Names are placed on the ballot at the primary election by petition of two per cent of the registered voters.

Candidates to twice the number of offices to be filled, receiving the highest number of votes at the primary are the candidates at the second election.

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INITIATIVE:

Petition of ten per cent of the registered voters to bring the ordinance to the attention of the council; after thirty days a petition of an additional fifteen per cent to have it submitted to the people (special election).

REFERENDUM:

Petition of twenty-five per cent of the registered voters (special election).

RECALL:

Petition of twenty-five per cent of the registered voters.

No recall petition may be filed within the first six months of office. The question of removal is separated from that of the choice of a successor, and the name of the officer sought to be recalled does not appear as a candidate to succeed himself.

The recall may be applied to the City Manager.

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APPENDIX B.

PLAN D PROVIDED FOR IN THE MASSACHUSETTS OPTIONAL CHARTER LAW.

GENERAL ACTS OF MASSACHUSETTS, 1915, CHAPTER 267.

SECTION 3. The government of the city and the general management and control of all its affairs shall be vested in a city council, which shall be elected and shall exercise its powers in the manner herein and in Part I set forth; except that the city manager shall have the authority hereinafter specified, and that the general management and conduct of the public schools of the city and of the property pertaining thereto shall be vested in the school committee.

SECTION 4. The city council shall consist of five members, who shall be elected at large by and from the qualified voters of the city for a term of two years and until their successors are elected and qualified; except that at the first election the three candidates having the highest number of votes shall serve for two years and the two candidates having the next highest number of votes shall serve for one year.

SECTION 5. All the legislative powers of the city shall be vested in the city council . . .

SECTION 9. The mayor shall be that member of the city council who, at the regular municipal election at which the three members of the council were elected, received the highest number of votes, except that at the first regular municipal election held in a city adopting this plan of government the mayor shall be the councillor receiving the highest number of votes. . . . The mayor shall be the presiding officer, except that in his absence the president of the council shall preside; and in the absence of both the mayor and the president of the council, a president pro tempore may be chosen. The mayor shall be the official head of the city. He shall have no power of veto, but shall have the same power as the other members of the council to vote upon all measures coming before it.

SECTION 10. The mayor shall receive for his services such salary as the city council shall by ordinance determine, not exceeding two thousand dollars a year, and he shall receive no other compensation from the city. Such salary shall not be increased or diminished during the term for which he is elected.

The council may by a vote of not less than three members, taken by call of the yeas and nays, establish a salary for its members, not exceeding five hundred dollars a year for each. Such salary may be reduced, but

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no increase therein shall be made to take effect during the year in which the increase is voted.

SECTION 11. The city council shall appoint a city manager, who shall be the administrative head of the city government and shall be responsible for the administration of all departments. He shall be appointed with regard to merit only, and he need not be a resident of the city when appointed. He shall hold office during the pleasure of the city council and shall receive such compensation as it shall fix by ordinance.

SECTION 12. The city manager shall (1) be the administrative head of the city government; (2) see that within the city the laws of the State and the ordinances, resolutions and regulations of the council are faithfully executed; (3) attend all meetings of the council, and recommend for adoption such measures as he shall deem expedient; (4) make reports to the council from time to time upon the affairs of the city, keep the council fully advised of the city's financial condition and its future financial needs; (5) appoint and remove all heads of departments, superintendents and other employees of the city.

SECTION 13. Such city officers and employees as the council shall determine are necessary for the proper administration of the city shall be appointed by the city manager, and any such officer or employee may be removed by him; but the city manager shall report each such appointment and removal to the council at the next meeting thereof following any such appointment or removal.

SECTION 14. The officers and employees of the city shall perform such duties as may be required of them by the city manager, under general regulations of the city council.

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APPENDIX C.

LIST OF CITIES WITH CITY MANAGERS.

I. CITIES WITH COMPLETE CITY-MANAGER PLAN ESTABLISHED BY CHARTER OR STATUTE. SMALL COMMISSION, INITIATIVE, REFERENDUM AND OTHER ESSENTIAL FEATURES USUALLY PROVIDED FOR.

A. — Cities over 50,000, Five in Number.

CITY.	Population in 1918.	In Effect.	Salary of Manager.
Grand Rapids, Mich.,	128,291	March, 1917	$4,000
Dayton, Ohio,	127,224	Jan., 1914	7,500
Norfolk, Va.,	89,610	Sept., 1918	9,000
Wichita, Kan.,	70,722	June, 1917	10,000
Springfield, Ohio,	51,550	Jan., 1914	6,000

B. — Cities of 10,000 to 50,000, Thirty-six in Number.

Kalamazoo, Mich.,	48,886	May, 1918	$4,200
Roanoke, Va.,	45,000	Sept., 1918	–
Wheeling, Va.,	43,377	July, 1917	8,000
Portsmouth, Va.,	39,651	Jan., 1917	4,500
San José, Cal.,	38,902	July, 1916	6,000
Niagara Falls, N. Y.,	37,353	Jan., 1916	5,000
Jackson, Mich.,	35,363	Jan., 1915	4,000
Waltham, Mass.,	30,570	March, 1918	5,000
Charleston, W. Va.,	29,941	May, 1915	3,300
Watertown, N. Y.,	29,894	Jan., 1920	–
Newburgh, N. Y.,	29,603	Jan., 1916	5,000
Alameda, Cal.,	27,732	May, 1917	4,000
Petersburg, Va.,	25,582	Sept., 1920	–
Ashtabula, Ohio,	21,498	Jan., 1916	2,500
Sandusky, Ohio,	20,193	Jan., 1916	5,000
Amarillo, Tex.,	19,124	Dec., 1913	2,400
Phœnix, Ariz.,	18,621	April, 1914	5,000
Hot Springs, Ark.,	17,238	April, 1917	2,500
Bakersfield, Cal.,	16,874	April, 1915	3,000
San Angelo, Texas,	16,500	April, 1916	2,500
Sioux Falls, S. D.,	16,499	May, 1918	–
Auburn, Maine,	16,393	Feb., 1918	3,600
Eldorado, Kan.,	15,000	July, 1917	3,600
Santa Barbara, Cal.,	14,846	Jan., 1918	7,500
Albuquerque, N. Mex.,	14,025	Jan., 1918	3,600
Sault Ste. Marie, Mich.,	13,919	Dec., 1917	3,600
Sherman, Texas,	13,667	April, 1915	2,400
Alpena, Mich.,	13,273	April, 1916	2,500
East Cleveland, Ohio,	13,214	Jan., 1918	3,600
Brownsville, Texas,	13,163	Jan., 1916	3,600

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B. — Cities of 10,000 to 50,000, Thirty-six in Number — Concluded.

City.	Population in 1918.	In Effect.	Salary of Manager.
High Point, N. C.,	12,896	May, 1915	$2,700
Manistee, Mich.,	12,381	May, 1914	2,500
Tyler, Texas,	12,000	April, 1915	3,000
Boulder, Col.,	12,000	Jan., 1918	4,000
Goldsboro, N. C.,	10,719	July, 1917	3,300
Griffin, Ga.,	10,300	Dec., 1918	–

C. — Cities under 10,000, Forty-one in Number.

Cadillac, Mich.,	9,915	March, 1914	$2,000
Elizabeth City, N. C.,	9,710	April, 1915	1,800
Sumter, S. C.,	9,639	Jan., 1913	1,500
Alhambra, Cal.,	9,000	July, 1915	2,000
Xenia, Ohio,	8,712	Jan., 1918	3,000
Taylor, Texas,	8,200	April, 1914	2,600
Rock Hill, S. C.,	8,160	Jan., 1915	2,800
Albion, Mich.,	8,000	Jan., 1916	2,000
Kingsport, Tenn.,	8,000	March, 1917	3,000
St. Augustine, Fla.,	7,960	July, 1915	–
Grand Haven, Mich.,	7,280	April, 1915	2,500
Denton, Texas,	6,830	April, 1914	2,000
Yoakum, Texas,	6,630	Arpil, 1915	2,100
Gallipolis, Ohio,	6,490	Jan., 1918	1,500
La Grande, Ore.,	6,120	Oct., 1913	2,400
Webster City Iowa,	5,950	Oct., 1915	1,800
Petoskey Mich.,	5,610	April, 1916	2,000
Three Rivers, Mich.,	5,610	April, 1918	1,800
Ocala, Fla.,	5,610	Feb., 1918	–
Bryan, Texas,	5,530	Aug., 1917	2,400
Durango, Col.,	5,300	May, 1915	1,800
Hickory, N. C.,	5,200	May, 1915	1,500
Big Rapids, Mich.,	5,100	April, 1914	1,400
Mangum, Texas,	4,770	Nov., 1914	1,800
Cynthiana, Ky.,	4,580	Dec., 1915	900
Thomasville, N. C.,	4,590	May, 1915	1,200
Crystal Falls, Mich.,	4,340	May, 1918	2,400
Anoka, Minn.,	4,300	April, 1914	1,200
Morganton, N. C.,	4,240	May, 1913	1,500
Montrose, Col.,	3,825	Feb., 1914	1,800
Beaufort, S. C.,	3,710	May, 1915	1,800
Otsego, Mich.,	3,180	May, 1918	1,800
Collinsville, Okla.,	2,500	Feb., 1914	1,800
Lubbock, Texas,	2,180	May, 1918	–
Westerville, Ohio,	2,140	Jan., 1916	1,800
Morris, Minn.,	2,080	Jan., 1914	1,800
Madill, Okla.,	1,760	– 1917	1,800
Sherill, N. Y.,	1,500	May, 1916	–
Birmingham, Mich.,	1,395	May, 1918	2,000
South Charleston, Ohio,	1,325	Jan., 1918	1,400
Royal Oak, Mich.,	1,200	May, 1918	–

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II. Cities with Modified City Manager Plan. Old Form of Government retained. City Manager usually provided for by Ordinance of City Council or by Amendment of Existing Charter.

City.	Population in 1918.	In Effect.	Salary of Manager.
Altoona, Pa.,	58,659	Jan., 1918	$8,000
San Diego, Cal.,	53,330	May, 1915	6,000
Bethlehem, Pa.,	14,142	May, 1918	–
Staunton, Va.,	11,654	Jan., 1918	1,800
Glendale, Cal.,	11,500	May, 1915	2,400
Johnson City, Tenn.,	10,925	July, 1909	1,500
Brownwood, Texas,	10,500	– 1917	2,400
Norwood, Mass.,	9,605	Jan., 1915	3,000
Sewickley and Edgeworth, Pa.,	9,500	July, 1918	3,600
Charlottesville, Va.,	8,000	Aug., 1913	2,000
San Rafael, Cal.,	7,650	Aug., 1915	–
Winchester, Va.,	7,140	May, 1916	2,000
Roswell, N. Mex.,	7,070	May, 1914	1,800
Fredericksburg, Va.,	6,120	Sept., 1912	4,000
Towanda, Pa.,	5,610	Feb., 1918	1,200
Tarboro, N. C.,	5,100	April, 1915	1,500
Anchorage, Alaska,	4,800	July, 1916	3,300
Grove City, Pa.,	4,240	April, 1916	–
Brigham City, Utah,	4,240	Jan., 1918	2,100
Clarinda, Iowa,	4,570	April, 1913	2,000
Mt. Pleasant, Iowa,	4,170	April, 1916	1,530
Teaque, Texas,	3,760	Jan., 1915	1,700
Iowa Falls, Iowa,	3,790	April, 1914	1,500
Farmville, Va.,	3,710	Sept., 1915	1,200
Winnetka, Ill.,	3,610	Jan., 1915	3,000
Pipestone, Minn.,	3,010	May, 1917	1,700
Morehead City, N. C.,	2,650	June, 1917	1,500
Bentonville, Ark.,	2,650	Sept., 1915	–
Eaton Rapids, Mich.,	2,400	April, 1913	1,500
Weatherford, Okla.,	2,400	– –	–
Glencoe, Ill.,	2,130	Jan., 1914	2,500
Carrington, N. D.,	1,875	May, 1917	1,200
Huntington Beach, Cal.,	1,460	July, 1916	2,400
Clark, S. D.,	1,355	May, 1912	960
Glasgow, Mont.,	1,300	July, 1916	2,100
Grosse Pte. Shores, Mich.,	1,200	June, 1916	1,800
Largo, Fla.,	500	June, 1913	900

Summary.

Cities with complete city-manager plan,	82
Cities with modified city-manager plan,	38
Total,	120

Note. — For this table the Commission is indebted to Harrison G. Otis, Esq., City Manager of Auburn, Maine, Secretary of the City-Managers' Association.

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BULLETIN No. 14

CONSTITUTIONAL RESTRICTIONS ON MUNICIPAL INDEBTEDNESS

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CONSTITUTIONAL RESTRICTIONS ON MUNICIPAL INDEBTEDNESS.

I. ORIGIN AND DEVELOPMENT.

The regulation of municipal indebtedness received little attention in the United States until the early seventies, when local debts commenced to pile up at a rapid rate. The total debt of Massachusetts cities and towns, for example, "increased from $34,826,860 in 1870 to $80,427,745 in 1874 — a matter of 134 per cent, while the valuation . . . increased but 29 per cent and taxes but 31 per cent. . . . Cases were not infrequent when bonds were issued by districts in excess of the total assessed value of all the taxable property therein. The debt of one hundred and thirty of the largest cities in the United States in 1876 showed an increase of 200 per cent in ten years, while the annual taxation increase was 83 per cent, and the valuation of property 75 per cent in the same period."[1]

A large part of this heavy indebtedness was the result of investments by cities and towns in private enterprises — especially canals, railways and turnpikes. When a number of the enterprises failed and the burden was felt by the taxpayers, a reaction occurred. As early as 1851 the Constitution of Ohio specifically prohibited such subsidies, while Oregon and Pennsylvania in 1857 adopted constitutional amendments prohibiting municipalities from lending their credit to or becoming stockholders in private corporations.[2] The constitutions of Maryland, Mississippi, Missouri, Nevada and North Carolina also imposed partial limitations of a similar nature during the period from 1865 to 1868.[3] These earlier restrictions, however, were somewhat indefinite as to their applicability and it was not until

[1] Horace Secrist, *An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States.* Bulletin of the University of Wisconsin, No. 637. Madison, 1914, p. 56.

[2] *Constitution of Ohio, 1851*, Art. VIII, Sect. 6; *Constitution of Oregon, 1857*, Art. XI, Sect. 9; *Constitution of Pennsylvania, 1838*, Amendments, Art. XI, Sect. 7, adopted in 1857.

[3] Secrist, p. 59.

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after the crisis of the seventies that the movement to curtail municipal debts became of much importance.

After 1870 the agitation for constitutional restrictions on the power of municipalities to incur indebtedness was given a great impetus, so that by 1880 the constitutions of eighteen States contained prohibitions against municipalities lending aid to or becoming stockholders in private corporations. A short while later provisions were inserted in constitutions limiting the total amount of debt which cities might incur for any purpose whatsoever, the length of bonds, methods of payment and so on. At the present time, therefore, constitutional restrictions on municipal indebtedness are very general, there being only a few State constitutions which do not either contain prohibitions against the lending of credit to private corporations or include limitations as to the maximum amount of debt that may be incurred by a municipality or both. Even in those States where the constitution is silent on the subject, it is oftentimes the practice of the Legislature to limit the amount and purpose of municipal indebtedness by statute. This is the method of regulation in Massachusetts and in such other States as Ohio, Michigan, Kansas, Rhode Island, and so on. In the following analysis, however, consideration is given only to constitutional provisions, with the exception of that part of the report dealing with the situation in Massachusetts.

The various constitutional restrictions on municipal indebtedness fall roughly into three general classes: (1) prohibitions against municipalities lending their credit to private enterprises; (2) limitations as to the total amount of debt that may be incurred by municipalities, and (3) regulations as to the length of bonds, methods of payment, etc.

II. PROHIBITIONS AGAINST THE LENDING OF CREDIT TO PRIVATE ENTERPRISE.

The most common constitutional restrictions upon municipal indebtedness are those prohibiting municipalities from lending their credit to private corporations. There are thirty States which prohibit such subsidies absolutely to all corporations: namely, Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kentucky, Louisiana,

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Michigan, Mississippi, Missouri, Montana, New Jersey, New York, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, Wyoming. In the three States of Nebraska, North Carolina and Tennessee, municipalities are forbidden to pledge their credit to private corporations unless approved by the voters. In a few other States, of which Connecticut, Maryland, Minnesota, Nebraska and Nevada are examples, prohibitions of this nature are only partial in their application, as in Connecticut, for instance, where the only corporations to which a city or town may not lend its aid are railroads. Thus it is seen that the practice of forbidding cities and towns from incurring obligations in behalf of private corporations is almost universal, the only States without such constitutional limitations being Massachusetts, Indiana, Iowa, Kansas, Maine, Rhode Island, South Carolina, Vermont and Wisconsin.

III. LIMITATIONS AS TO TOTAL AMOUNT OF DEBT THAT MAY BE INCURRED BY CITIES AND TOWNS.

To-day the most important constitutional restrictions on municipal indebtedness are those which limit the total amount of debt that may be incurred by a city, town or other municipal corporation. There are twenty-eight States which impose such limitations, namely: Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Missouri, Montana, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.[1]

Methods of fixing Debt Limits.

The most common method of fixing municipal debt limits in the various States is to provide that the total amount of indebtedness shall not exceed a certain percentage of the assessed

[1] The constitutional references are as follows: Alabama, XII, 225, 226; Arizona, IX, 8; Arkansas, XVI, 1; California, XI, 18; Colorado, XI, 8; Georgia, VII, Sect. VII, 1; Idaho, VIII, 3; Illinois, IX, 12; IV, 34; Indiana, XIII, 1; Iowa, XI, 3; Kentucky, 157, 158; Louisiana, Art. 281, Sect. 1; Maine, Amendments I, XIII; Missouri, IX, 19; X, 12; Montana, XIII, 6; New Mexico, IX, 12, 13, 15; New York, Art. 8, Sect. 10; North Dakota, XII, 183; Oklahoma, X, 26, 27, Schedule 25; Pennsylvania, IX, 8, 15; South Carolina, VIII, 7; X, 5; South Dakota, XIII, 4; Utah, XIV, 3, 4; Virginia, VIII, 127; Washington, VIII, 6; West Virginia, X, 8; Wisconsin, XI, 3; Wyoming, XVI, 3, 5.

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valuation of all taxable property within the city or town. The amount of debt which may be incurred under this method varies from one and one-half per cent of the assessed valuation in Washington[1] to ten per cent in Louisiana, the most common provision being five per cent.

The States of New York, Virginia, California and Idaho, however, use a somewhat different basis from that of the other commonwealths. In New York and Virginia the limit beyond which debt may not be created is fixed at ten and eighteen per cent respectively of the assessed valuation of real estate alone;[2] while in California and Idaho the aggregate amount of debt of a city or town may not exceed the income and revenue of the municipality for the current year.[3] Following is a table showing the basis of municipal debt limits in the several States: —

State.	Debt Limit.
Alabama,	5 per cent of assessed valuation of property.
Arizona,	4 per cent of assessed valuation of property.
Arkansas,	7 per cent of assessed valuation of property.
California,	Not to exceed annual revenue and income.
Colorado,	3 per cent of assessed valuation of property.
Georgia,	7 per cent of assessed valuation of property.
Idaho,	Not to exceed annual revenue and income.
Illinois,	5 per cent of assessed valuation of property.[4]
Indiana,	2 per cent of assessed valuation of property.
Iowa,	5 per cent of assessed valuation of property.
Kentucky,	2 to 10 per cent of assessed valuation of property.[5]
Louisiana,	10 per cent of assessed valuation of property.
Maine,	5 to 7½ per cent of assessed valuation of property.[6]
Missouri,	5 per cent of assessed valuation of property.[7]
Montana,	3 per cent of assessed valuation of property.
New Mexico,	4 per cent of assessed valuation of property.
New York,	10 per cent of assessed valuation of real estate alone.
North Dakota,	5 per cent of assessed valuation of property.

[1] Debt may be increased, however, from one and one-half per cent to five per cent of assessed valuation by referendum.

[2] The Virginia Constitution provides, however, that the constitutional limit of eighteen per cent is not to apply to cities whose charters existing at the time of the adoption of the Constitution authorised a larger percentage of indebtedness.

[3] This limit may be exceeded, however, in California and Idaho upon approval of two-thirds of the qualified electors.

[4] Actual debt limit is very low in Illinois, since property is assessed at only one-third of its true value.

[5] Cities over 15,000, 10 per cent; cities of third and fourth class, five per cent; other cities, three per cent. Other municipalities, two per cent.

[6] Cities and towns of less than 40,000, five per cent; cities over 40,000, seven and one-half per cent.

[7] Does not apply to cities over 300,000.

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State.	Debt Limit.
Oklahoma,	5 per cent of assessed valuation of property.
Pennsylvania,	7 per cent of assessed valuation of property.
South Carolina,	8 per cent of assessed valuation of property.
South Dakota,	5 per cent of assessed valuation of property.
Utah,	4 per cent of assessed valuation of property.
Virginia,	18 per cent of assessed valuation of real estate alone. [1]
Washington,	1½ to 5 per cent of assessed valuation of property. [2]
West Virginia,	5 per cent of assessed valuation of property.
Wisconsin,	5 per cent of assessed valuation of property.
Wyoming,	2 per cent of assessed valuation of property.

Referendum required on Bond Issues.

Some of the States not only fix debt limits in their constitutions but provide also that the approval of the voters must be received before bonds of any considerable amount may be issued within the limits so established. The most common provision in this respect is that found in the constitutions of California, Idaho, Kentucky, Missouri,[3] Oklahoma and Utah, which require a referendum on all debts contracted by a city within the constitutional debt limit if they exceed in any year the income and revenue of the municipality for that year. Under the Pennsylvania Constitution any new debt which exceeds two per cent of the assessed valuation must be submitted to the voters, while in Arkansas, South Carolina, West Virginia, Arizona, Colorado, Louisiana,[4] and New Mexico the creation of any debt whatsoever must be referred to the voters regardless of its amount.[5] In the four States last mentioned — Arizona, Colorado, Louisiana and New Mexico — taxpayers alone have a right to vote on bond issues, while in the other States the matter is presented to the regular voters. The vote necessary to legalize a loan varies from a mere majority to two-thirds of the qualified electors.

In these States, therefore, there is a double check upon municipal indebtedness, first by fixing a maximum beyond

[1] Does not apply to cities whose charters at time of the adoption of the Constitution permitted larger indebtedness than eighteen per cent.

[2] Debt limit in Washington, one and one-half per cent, unless approved by referendum, in which case it may be increased to five per cent.

[3] Does not apply to cities over 300,000.

[4] Does not apply to New Orleans.

[5] In addition to the States above mentioned the Illinois Constitution requires a referendum on bonds issued by the city of Chicago.

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which debt may not be incurred, and secondly by requiring that debts created within this limit must be referred either to the regular voters or to those who pay a property tax.

PROVISIONS FOR EXCEEDING DEBT LIMIT BY REFERENDUM.

In most of the States whose constitutions contain municipal debt limits, the aggregate amount of indebtedness as fixed in the constitution may not be exceeded by a city or town under any circumstances, and all debts beyond the limit are void. Exceptions to this rule, however, are found in Arizona, California, Idaho and North Dakota, where borrowing beyond the limit may be authorized by referendum. Under the Arizona Constitution any city or town may exceed the four per cent debt limit to an indefinite amount provided a majority of the taxpayers vote in favor of the proposition, while in California and Idaho a similar privilege is permitted provided the consent of two-thirds of the qualified voters is obtained. Under the Constitution of North Dakota any incorporated city may, by a two-thirds vote of the electors, increase the debt limit from five per cent of the assessed valuation of property to eight per cent of such valuation, while in Washington the maximum amount of debt may be increased from one and one-half per cent to five per cent of the assessed valuation by referendum.

Provisions are also found in a few of the State constitutions permitting the debt limit to be increased to a limited degree for the purchase or construction of certain specified public utilities. In Utah, for example, cities may be authorized to incur a larger indebtedness than that permitted in the Constitution for the purpose of supplying water, light and sewers, provided that the consent of a majority of the taxpayers is obtained. The amount of additional borrowing which may be permitted for these purposes in this State is limited to four per cent of the assessed valuation of property in cities of the first and second class, and to eight per cent in cities of the third class. South Dakota also permits cities to borrow beyond the debt limit for water works, lighting plants and street railways; the amount of additional borrowing which may be incurred for waterworks is limited to ten per cent of the assessed valuation of taxable property, and that for lighting plants and street railways to eight per cent of such valuation. In Alabama, North Dakota

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and Missouri additional debts may be incurred beyond the debt limit for water and sewerage systems, etc., to an amount not exceeding three, four, and five per cent respectively of the assessed valuation.

Amounts to be exempted in computing Debt Limits.

In setting limitations upon municipal indebtedness the constitutions sometimes provide that certain forms of debts shall not be included within the reckoning, such as temporary loans and debts incurred for the purchase, construction or extension of water works and other public utilities.

Temporary Loans.

Temporary loans which are made in anticipation of taxes in order to bridge over the period from one tax collection to another are expressly exempted from the debt limit in such States as New York, Maine and Virginia, while in a few other States the constitutions provide that a limited amount of such loans may be so exempted. In Alabama, for example, temporary loans equal in amount to one-fourth of the annual revenue of the municipality may be exempted; under the Constitution of Georgia such loans may be excepted to the amount of one-fifth of one per cent of the assessed valuation of property in the city or town; while in Missouri temporary loans not exceeding seven-eighths of the entire annual revenue applicable to governmental purposes may be disregarded in computing the debt limit of cities over 200,000 in population. Even in those States where exemptions are not specifically provided for, the general practice is to omit temporary loans from the debt limit on the ground that such obligations are not a part of the permanent debt, but are offset by taxes to be collected the following year.[1]

Debts incurred for Waterworks, Light Plants and Other Public Utilities.

One of the most recent developments in constitutional debt limits has been the tendency to exempt certain types of loans incurred for the acquisition or equipment of waterworks, light-

[1] Secrist, 99. See also *Report of the Advisory Commission on Taxation and Finance*, New York City, 1908, pp. 34-35.

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ing plants and other public utilities. It is maintained that loans of this character should not be included in reckoning the maximum legal indebtedness of a city because the interest and principal on the same can be paid out of the income derived from the plant, thus making it unnecessary to draw upon the general tax fund. The States whose constitutions permit public utility loans to be exempted from the constitutional debt limit include South Carolina, Arkansas, Oklahoma, New Mexico, Pennsylvania, New York and Virginia. The Constitutions of Michigan and Ohio also contain provisions permitting public utility bonds to be omitted from such statutory debt limits as may be fixed by the legislature. The following is an analysis of the exemptions for such purposes in the various States above mentioned: —

South Carolina, Arkansas, Oklahoma and New Mexico. — Under the South Carolina Constitution debts incurred for the purchase, establishment and maintenance of waterworks, sewerage systems and lighting plants in certain specified cities are not to be included in determining the maximum amount of indebtedness of the city in question.[1] All such debts, however, must be approved by a majority of the voters. The Constitutions of Arkansas,[2] Oklahoma,[3] and New Mexico [4] contain similar provisions applicable to all cities in the State. In Arkansas it is expressly provided that a mortgage or lien on the plant must be given as additional security for any debt beyond the constitutional limit.

Michigan and Ohio. — The Constitutions of Michigan and Ohio contain an identical provision authorizing any municipality which acquires or constructs a public utility to "issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the

[1] *Constitution of South Carolina*, VIII, 7.
[2] *Constitution of Arkansas*, XVI, 1.
[3] *Constitution of Oklahoma*, X, 27.
[4] *Constitution of New Mexico*, IX, 13.

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same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure."[1]

Pennsylvania, New York and Virginia. — As already explained above, the principle underlying the exemption of public utility loans from the debt limit is that they represent the indebtedness of a productive plant, the income of which will in time amortize the bonds. In most of the States, however, no attempt is made to differentiate between utilities which have an actual income and those that do not. In the Constitutions of the three States of Pennsylvania, New York and Virginia, on the other hand, it is expressly required that the public utility in question must produce an actual net revenue before its indebtedness may be considered as outside of the debt limit.

The Constitution of Pennsylvania as amended in 1913 provides as follows in regard to such deductions: —

> No obligations which have been heretofore issued, or which may hereafter be issued, by any county or municipality, other than Philadelphia, to provide for the construction or acquisition of waterworks, subways, underground railways or street railways, or the appurtenances thereof, shall be considered as a debt of a municipality (within the meaning of the debt limit) . . . if the net revenue derived from said property for a period of five years, either before or after the acquisition thereof, or, where the same is constructed by the county or municipality, after the completion thereof, shall have been sufficient to pay interest and sinking-fund charges during said period upon said obligations, or if the said obligations shall be secured by liens upon the respective properties, and shall impose no municipal liability.[2]

The New York Constitution also was amended in 1909 so as to provide a more liberal borrowing policy for the city of New York, which had practically reached its debt limit.[3] This amendment authorizes the exemption of public utility loans in the city of New York, but defines exactly the circumstances under which such deductions shall be permitted. The provision is as follows: —

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[1] *Constitution of Michigan*, Art. VIII, Sect. 24; *Constitution of Ohio*, Art. XVIII, Sect. 12.

[2] *Constitution of Pennsylvania*, Art. IX, Sect. 15.

[3] *Report of Advisory Commission on Taxation and Finance*, New York City. "The City Debt in Relation to the Constitutional Limit of Indebtedness, containing a proposed amendment to Section 10 of Article VIII of the State Constitution." New York, 1908.

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. . . Any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization instalments, and . . . any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The Legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The Legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of determining the amount of any debt to be so excluded.[1]

The New York Constitutional Convention of 1915, in submitting the draft of a new constitution to the voters, did not propose any material change in the above-mentioned provisions except to require that all bonds be issued on the serial plan.[2]

The provisions of the Virginia Constitution on local debt are much the same as those in the New York Constitution quoted above and require that the exemption of public utility obligations from the debt limit shall be permitted only so long as the plant in question produces sufficient revenue to pay the cost of operation and administration.[3]

The Evasion of Debt Limits by the Creation of Overlapping Municipal Corporations.

Notwithstanding the fact that debt limits have been definitely prescribed in the various State constitutions, cities have in some

[1] *Constitution of New York*, Art. VIII, Sect. 10.
[2] *Proposed Constitution of New York, 1915*, Art. XI, Sects. 11, 12.
[3] *Constitution of Virginia*, Art. VIII, Sect. 127.

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cases found it possible to evade such restrictions by the establishment within their limits of independent districts which also have the right to levy taxes, borrow money, etc. This is the device which has been resorted to in the city of Chicago, where there are a number of separate local governments such as the city corporation, the county, school district, park commissions, sanitary district, and so on, occupying practically the same territory and each with the power to borrow independently up to five per cent of the assessed valuation within its boundaries.

The Constitutions of two States — South Carolina and Nebraska — forbid an undue accumulation of debt by such overlapping of political jurisdictions. The South Carolina Constitution, for example, which places an eight per cent limit upon the indebtedness of each separate municipality, provides that whenever there are two or more municipal corporations extending over the same territory each of "such political divisions or municipal corporations shall so exercise its power to increase its debt under the foregoing eight per cent limitation that the aggregate debt over and upon any territory of this State shall never exceed fifteen per cent of the value of all taxable property in such territory."[1] Nebraska prohibits any county with all its subdivisions from making a grant in aid of any railroad in excess of ten per cent of its assessed value unless it receives a two-thirds popular vote.[2] These are the only two States, so far as can be determined, whose constitutions prohibit the Legislature from indefinitely increasing debt by the creation of independent corporations and in only one of these — South Carolina — is the prohibition of general applicability.

IV. PROVISIONS AS TO TERM OF LOANS AND METHODS OF PAYMENT.

The third important type of restrictions on municipal indebtedness comprises those regulating the term of loans, the methods of paying the interest and principal on the same, and the application of funds derived from such sources.

[1] *Constitution of South Carolina*, Art. X, Sect. 5.
[2] *Constitution of Nebraska*, Art. XII, Sect. 2.

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Term of Loans.

The Constitutions of thirteen States (Arkansas, California, Georgia, Idaho, Illinois, Kentucky, Louisiana, Missouri, New Mexico, Oklahoma, Pennsylvania, West Virginia and Wisconsin) prescribe the maximum period for which debts may run, varying from fifteen years in Colorado to fifty years in New Mexico and seventy-five years for certain specified cities in California. The Constitutions of three other States — North and South Dakota and South Carolina — require that debts shall be paid "when due" without specifying the period. One State — Colorado — also stipulates that bonds shall not be issued for less than ten years.[1]

Following is a table showing the maximum term of loans as provided for in the various State constitutions: —

Table showing Maximum Term of Loans.

Fifteen years: —	Thirty-four years: —
Colorado.	West Virginia.
Twenty years: —	Thirty-five years: —
Idaho.	Arkansas.
Illinois.	Forty years: —
Missouri.	Kentucky.
Wisconsin.[2]	Louisiana.
Twenty-five years: —	California.[4]
Oklahoma.	Fifty years: —
Thirty years: —	New Mexico.
Pennsylvania.[3]	Seventy-five years: —
Georgia.	California.[4]

Provisions as to Payment of Interest and Principal.

A number of the State constitutions also contain provisions requiring that municipalities in borrowing money for a term of years must make definite arrangements for paying the interest and principal as they fall due. In this connection seventeen of the States, namely Arkansas, California, Colorado, Georgia,

[1] Constitutional references are as follows: Arkansas, XVI, 1; California, XI, 13½, 18; Colorado, XI, 8; Georgia, VII, Sect. VII, 2; Idaho, VIII, 3; Illinois, IX, 12; Kentucky, 159; Louisiana, 281, 317, 318, 321-323; Missouri, X, 12, 12*a*; North Dakota, XII, 184; New Mexico, IX, 12; Oklahoma, X, 26, 27; Pennsylvania, XV, 3; South Carolina, VIII, 6, 7; South Dakota, XIII, 5; West Virginia, X, 8; Wisconsin, XI, 3.

[2] In Wisconsin debts for the acquisition of land for municipal purposes may run for as long as fifty years.

[3] The city of Philadelphia may issue bonds for the purchase and construction of certain specified improvements for a term of fifty years.

[4] Term of loans for California municipalities in general is forty years; in San Francisco, San José and Santa Clara, however, debts may be incurred for seventy-five years.

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Idaho, Illinois, Kentucky, Louisiana, Missouri, New Mexico, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, West Virginia and Wisconsin, require that no municipality shall incur any debt unless it provides at the same time for the levying of an annual tax sufficient in amount to pay the recurring interest and the principal on the same. A few of the above-mentioned States place limits upon the tax that may be levied for debt purposes, as in Arkansas, which provides that such tax shall not exceed seven mills on the dollar, and Colorado and New Mexico, which establish limitations of twelve mills on the dollar.

PROCEEDS OF LOANS TO BE APPLIED TO SPECIFIED PURPOSES.

The constitutions of some of the States, including Arkansas, Kentucky, Oklahoma, Utah, Montana, Missouri, and New Mexico, have attempted to make certain that the proceeds of loans issued for a particular purpose shall not be directed to any other object. The common provision in this respect is that money borrowed by any municipality "shall be applied to the purpose for which it was obtained, or to repay such loan, and to no other purpose whatever."

V. RESTRICTIONS UPON MUNICIPAL INDEBTEDNESS IN MASSACHUSETTS.

In Massachusetts there are no constitutional restrictions upon the indebtedness of cities and towns, but these matters have been regulated by general laws enacted by the Legislature. The first statute limiting municipal indebtedness in the Commonwealth was the so-called Municipal Indebtedness Act of 1875 (Chap. 209, Acts of 1875), which was enacted in order to check the rapid growth of local debts during the period at the close of the Civil War. The need for such legislation is shown by the fact that local indebtedness had increased from $19,852,109 in 1865 to $80,427,245 in 1875, or an increase of three hundred and five per cent, while the increase in population and in property valuation on the other hand were only thirty and eighty-five per cent respectively during the same period.[1]

[1] Annual Address of Governor Rice to the General Court, 1876, *Massachusetts Senate Document No. 1 (1876)*, 14. See also *House Document No. 1803 (1915)*, 13.

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Provisions of Act of 1875.

The Municipal Indebtedness Act of 1875, as amended in 1885 and later years (Chap. 27, Revised Laws of 1902), provided in the first place that the indebtedness of any city should not exceed two and one-half per cent of the average valuation of taxable property for the three preceding years, while the indebtedness of a town was not to exceed three per cent of the valuation for the preceding year alone. It was expressly stipulated, however, that a city or town might incur debts outside of the statutory limit for the purpose of establishing, purchasing or extending gas or electric lighting plants, provided that such additional debts should not exceed five per cent of the taxable valuation in towns and one and one-half per cent in cities. It was also provided that temporary loans for the abolition of grade crossings and in anticipation of the taxes for the current year should not be reckoned in determining the authorized limit of indebtedness.

In the second place a two-thirds majority of each branch of the city council was required for all debts except temporary loans, while in towns a similar majority of the voters voting at a town meeting was necessary.[1]

Thirdly the act of 1875 enumerated the purposes for which debts might be incurred and fixed the periods of time over which such debts might be extended. Debts incurred for waterworks, lighting plants, playgrounds, parks and sewers were allowed to run for thirty years, those for schools and other public buildings, twenty years. All other debts were to run for ten years except in the city of Boston, where the limit was fixed at twenty years.

Actual Workings of Municipal Indebtedness Act of 1875.

Little attempt was made to determine the actual workings of the Municipal Indebtedness Act until 1911–12, when the Director of the Bureau of Statistics, under authorization from the Legislature, submitted a report on the subject.[2] The general conclusion of the report was that the act of 1875 had been

[1] In the case of temporary loans only a bare majority was necessary.

[2] *Report of a Special Investigation Relative to the Indebtedness of the Cities and Towns of the Commonwealth*, by the Director of the Bureau of Statistics, April 15, 1912. Massachusetts House Document No. 2168 (1912).

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evaded in a number of cases and had not succeeded in checking the rapid growth of municipal debts. The most important findings of the investigation are quoted below: —

An aggregate municipal indebtedness for the cities and towns of the Commonwealth amounting to approximately a quarter of a billion of dollars, and of which more than $238,000,000 is funded or fixed, is unquestionably a serious fact, the significance of which is not lessened by the knowledge that in our cities alone the latter class of debt is increasing annually at the rate of approximately $7,000,000 and in our large towns at the rate of approximately $700,000. It is not surprising, therefore, that this situation should be the cause of increasing apprehension on the part of the public and that the question should be seriously raised as to whether it may not be possible by some comprehensive legislation to check the growth of municipal indebtedness in Massachusetts; or, at least, to restrict more carefully the purposes for which our cities and towns should be permitted to borrow money.[1]

The Legislature, when it passed the Municipal Indebtedness Act of 1875, established the principle that the right of cities and towns to administer their financial affairs was not an unlimited right. It laid down what were intended to be certain definite bounds to the incurrence of debt, specifying purposes for which debts might be incurred and the periods of time to which loans should be limited; and it provided, furthermore, that the indebtedness should be limited to a certain per cent of the valuation. . . . What our legislators could not foresee was the ingenious devices by which ways were to be discovered for evading the clear intent of the law, or, where its intent was not clearly expressed, for taking refuge in that form of interpretation which would most conveniently serve an immediate exigency, political or otherwise.[2]

It is unfortunate that those who drew the statute did not make their intent in numerous important particulars more clear. In the absence of clarity of statement and of judicial interpretations, it is not surprising that opinions given by many different attorneys should not be uniform, even when rendered in good faith. Hence it is that after the lapse of a full generation we are again confronted with substantially the same problem that led to the passage of the act of 1875 — with a state of affairs, in many of our municipalities, apparently not a whit better than if no law on the subject had ever been passed.[3]

The investigation showed that the most common method of evading the debt limit in cities was by the issue of demand notes for so-called temporary loans in anticipation of taxes.

[1] *Report of a Special Investigation Relative to the Indebtedness of the Cities and Towns of the Commonwealth*, by the Director of the Bureau of Statistics, April 15, 1912. Massachusetts House Document No. 2168, p. 7 (1912).

[2] *Ibid.*, p. 9.

[3] *Ibid.*, p. 10.

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These demand notes were oftentimes allowed to run for a term of years so as to become a part of the fixed or permanent debt, despite the requirement that all such loans should be paid within one year from the date of issue. In regard to this method of getting around the debt limitations the Director of the Bureau of Statistics reported as follows: —

> The law authorizes such loans simply as a matter of convenience for the purpose of affording a means of meeting current expenses pending collections of taxes and it expressly stipulates that all such loans must be paid within a year from the taxes of the year in which the debt is incurred. While a city or town would hardly, in the face of this law, deliberately attempt to secure a loan on a tax note for a period in excess of one year, it was formerly possible to issue with apparent impunity a demand note and allow it to remain unpaid for a generation, or so long as the holder refrained from demanding payment.[1]

It was also pointed out that the restrictions placed upon the incurrence of funded debt by general law had been

> seriously weakened by virtue of the large number of special acts passed by the Legislature in response to pleas of cities and towns for exemption from its provisions from time to time. The act of 1875 had scarcely been placed upon the statute book before these petitions for special favor began to be made, and, while in the first few years after its passage they were comparatively few in number, it was not long before they began to multiply rapidly. The number of such special acts, many of which took the form of authorizing the issue of loans for some particular purpose outside the debt limit, run literally into the hundreds. While such borrowings have been legalized and are, therefore, not subject to the criticism applying to debts incurred without the sanction of the law, their number and character signify one of two things: Either the exemptions have been granted, in many instances, too complacently, for the mere asking and without sufficiently stout resistance based upon careful inquiry; or the general law was itself too drastic for universal application and was not made sufficiently elastic to meet natural variations in local conditions. The gross outstanding debt outside the limit for general purposes, under the authority of special legislation, is approximately $73,000,000.[2]

It is stated that between 1875 and 1912 no fewer than fifteen hundred special acts were passed by the Massachusetts Legislature granting various cities authority to borrow outside the debt limit for one reason or another.[3]

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[1] *Massachusetts House Document No. 2168 (1913)*, p. 13.

[2] *Ibid.*, pp. 19–20.

[3] *Report of the Joint Special Committee on Municipal Finance*, 1913 (House Document No. 1803), p. 47.

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Municipal Finance Act of 1913.

Following the report of the Bureau of Statistics a joint special committee on municipal finance was appointed by the Legislature, which in 1913 submitted several bills proposing a revision of the limitations on municipal debt.[1] As a result of the recommendations of this committee, the Legislature passed the "Municipal Finance Act of 1913" which supersedes the law of 1875.[2]

Limit of Amount of Debt.

The act of 1913 makes practically no change in the debt limits as prescribed in the earlier law except to provide that the valuation of property upon which the limit is based shall be the average assessed value for the three preceding years in towns as well as in cities. As it now stands the law prescribes that "a city shall not authorize indebtedness to an amount exceeding two and one half per cent, and a town shall not authorize indebtedness to an amount exceeding three per cent on the average of the assessor's valuations of the taxable property for the three preceding calendar years." [3]

Exemptions — Temporary Loans and Public Utility Bonds.

In computing the maximum limit beyond which cities and towns may not borrow money the law stipulates that the following exemptions shall be made: (1) temporary loans in anticipation of taxes; (2) debts for the establishment, purchase or extension of waterworks; (3) debts for the establishment or equipment of lighting plants, provided they do not exceed two and one-half per cent of the assessed valuation in cities and five per cent in towns; and (4) debts for acquiring lands for playgrounds not exceeding one and one-half per cent of the assessed valuation in both cities and towns.[4]

In order to prevent the evasion of the debt limit, the law provides that temporary loans in anticipation of taxes shall not only be payable within one year from the date of issue, but also

[1] *Report of the Joint Special Committee on Municipal Finance*, 1913 (House Document No. 1803), p. 47.

[2] *Acts and Resolves of Massachusetts, 1913*, Chap. 719, Sects. 1–15. For amendments see *General Acts of 1915*, Chap. 115; *General Acts of 1916*, Chap. 62 and Chap. 111. For the text of the law, see Appendix, p. 545.

[3] *Acts and Resolves of Massachusetts, 1913*, Chap. 719, Sect. 12.

[4] *Ibid.*, Sect. 6.

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that they shall not be renewed or paid by the issue of new notes.[1] The issuing of notes payable on demand is expressly prohibited.[2]

Although not a part of the Municipal Finance Act of 1913, mention should be made in this connection of the requirement that all notes issued by towns and by water, watch, light and improvement districts must be approved by the Director of the Bureau of Statistics. These matters were provided for by separate acts in 1910 and 1913.[3]

Purpose and Term of Loans.

In addition to fixing a limit upon municipal indebtedness, the Act of 1913 enumerates in considerable detail the purposes for which debts may be incurred and the terms for which they may run. The latter vary from five to thirty years according to the object. The purposes and terms of loans are as follows:[4]

(1) For the construction of sewers (thirty years).

(2) Acquisition of land for public parks (thirty years).

(3) Acquisition of land for general public purposes (twenty years).

(4) For the construction of and addition to school and other public buildings (twenty years).

(5) For the construction of iron, stone or concrete bridges (twenty years).

(6) For the original construction, widening or extension of streets (ten years).

(7) For the construction of stone, brick or other permanent pavements (ten years); for macadam pavement (five years).

(8) Purchase of land for cemeteries (ten years).

(9) For additional departmental equipment (five years).

(10) For the construction of sidewalks (five years).

(11) For connecting dwellings with public sewers (five years).

(12) For abolition of nuisances (five years).

(13) For extreme emergency appropriations involving the public health or safety (five years).

Debts for any other than the purposes specified are pro-

[1] *Acts and Resolves of Massachusetts, 1913*, Chap. 719, Sect. 3.

[2] *Ibid.*, Sect. 14.

[3] *Acts and Resolves of Massachusetts, 1910*, Chap. 616; *Acts and Resolves of Massachusetts, 1913*, Chap. 727.

[4] *Acts and Resolves of Massachusetts, 1913*, Chap. 719, Sect. 5.

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hibited under the general law, and the only way in which a city or town may borrow for additional objects is by obtaining a special act from the Legislature.

Method of Enforcement.

As a means of enforcing the provisions of the act it is provided that the State Supreme Court or the Superior Court may be appealed to for a writ of mandamus to compel the officials of any city or town to comply with its requirements.[1]

Actual Workings of Act of 1913.

As to the actual operation of the Act of 1913, the Director of the Bureau of Statistics had the following statement to make in his seventh annual report: —

> The Municipal Indebtedness Act, Chapter 719 of the Acts of 1913, became fully effective January 1, 1914, and I think I may say, — having due regard for certain temporary difficulties which it was to be expected would be experienced by some of our towns while adjusting themselves to the new conditions, — has already more than justified its passage and been productive only of salutary results.[2]

The Director of the Bureau is of the opinion, however, that the limitation on the total amount of indebtedness should be increased somewhat. His recommendations on this point are as follows:

> The debt limit for cities is now two and one-half per cent, and for towns three per cent, on the average of their assessed valuation for the three preceding calendar years, a limitation which has prevailed without substantial change since the original municipal indebtedness act of 1875. Almost as soon as that act was passed, however, our cities and towns began petitioning the Legislature for exemptions and the list of special acts to permit borrowing outside the debt limit has been lengthening year by year, so that, making due allowance for the passage of numerous special acts in the past which perhaps would not have been approved had more complete information as to their necessity been available, it is an open question and has been for some time whether an increase of the debt limit over the amount fixed under conditions of municipal life prevailing forty years ago is not demanded by considerations entirely consistent with sound public policy. But the effect of the operation of the new system of taxation [Income Tax Law of 1916], which removes the

[1] *Acts and Resolves of Massachusetts, 1913*, Chap. 719, Sect. 21.

[2] *Seventh Annual Report on the Statistics of Municipal Finances* by the Director of the Bureau of Statistics, 1912 (Boston, 1914), p. xvii.

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assessment of intangible personal property from the domain of the local authorities, will be to reduce the valuations on which the local borrowing capacity must be determined, and by thus contracting the basis of the computation, will materially reduce, in many instances, the actual amount which may be borrowed for needed permanent improvements. I therefore recommend that legislation be enacted with a view to increasing the statutory debt limit at least to the extent to which it may be reduced by the enactment of the income-tax law.[1]

VI. CONCLUSION.

The above analysis shows that since the seventies and eighties most of the States have placed limitations upon the amount and purposes of municipal indebtedness either by constitutional provisions or by statute. The tendency to continue such restrictions at the present time is shown by the fact that three of the recent Constitutions — Arizona (1912), Oklahoma (1907) and Virginia (1902) — contain definite restrictions upon the amount of debt that may be incurred by municipalities; while the Constitution of Michigan (1908) and that of Ohio (1912) provide that the Legislature shall pass general laws regulating such matters.

In all five of the above-mentioned States, as well as by recent amendments in New York (1909) and Pennsylvania (1913), cities are given the right to borrow outside the debt limit for the construction or purchase of certain specified public utilities, thus indicating a disposition to broaden the borrowing power in the case of publicly owned enterprises of a productive character.

The chief criticism directed against constitutional debt limits in the United States has been that they are too rigid and do not take into consideration the needs of each locality. It has been pointed out that the English method of administrative control is preferable to our system of constitutional or statutory regulation. In England, limitations upon municipal indebtedness are not fixed by statute but are regulated by the Local Government Board or some other administrative authority of the central government. The request of each city to borrow money is carefully investigated by the central body, which grants or withholds permission according to the circumstances of each individual case.[2]

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[1] *Ninth Annual Report on the Statistics of Municipal Finances*, 1914 (Boston, 1916), p. xvi.

[2] Lowell, A. L. *The Government of England* (1912 edition), II, 190–191. See also Munro, W. B., *The Government of European Cities*, 276–277.

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APPENDIX.

PROVISIONS OF THE MUNICIPAL FINANCE ACT OF 1913 IN REGARD TO MUNICIPAL INDEBTEDNESS.[1]

SECTION 3. Cities and towns, and fire, water and watch districts, so-called, may, by a majority vote, incur debt for temporary loans in anticipation of the revenue of the financial year in which the debt is incurred and expressly made payable therefrom by such vote, and may issue a note or notes therefor to an amount not exceeding in the aggregate the total tax levy of the preceding financial year, together with the bank, corporation and street railway tax received during the preceding financial year, exclusive of special or additional assessments or revenue from any other source except payments made by the Commonwealth in lieu of taxes on account of property taken for institutions or for metropolitan district purposes. Such notes shall be payable, and shall be paid, not later than one year from the date thereof, and shall not be renewed or paid by the issue of new notes, except as is provided in section nine.

SECTION 4. Cities and towns may, by a majority vote, incur debt for temporary loans for the payment of any land damages or any proportion of the general expenses of altering a grade crossing which they are required primarily to pay under the provisions of law, or any proportion of the expense of constructing a highway in anticipation of reimbursement by the Commonwealth, such reimbursement first to have been agreed upon by the Massachusetts Highway Commission, and may issue a note or notes therefor and for a period not exceeding one year from the date thereof; and when any money so paid is repaid to the municipality, it shall be applied to the discharge of the loan. Notes issued under the provisions of this section shall not be renewed or paid by the issue of new notes, except as is provided in section nine.

SECTION 5. Cities and towns may incur debt, within the limit of indebtedness prescribed in this act, for the following purposes, and payable within the periods hereinafter specified: —

(1) For the construction of sewers for sanitary and surface drainage purposes and for sewage disposal, thirty years.

(2) For acquiring land for public parks under the provisions of chapter twenty-eight of the Revised Laws and amendments thereof, thirty years.

(3) For acquiring land for, and the construction of, schoolhouses or buildings to be used for any municipal or departmental purpose, including the cost of original equipment and furnishing, twenty years.[2]

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[1] *Acts and Resolves of Massachusetts, 1913*, Chap. 719.

[2] Amended in 1916 (*General Acts of 1916*, Chap. 111) so as to authorise incurring of debt for purchase of land for any public purpose.

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(4) For the construction of additions to schoolhouses or buildings to be used for any municipal purpose, including the cost of original equipment and furnishings, where such additions increase the floor space of said buildings to which such additions are made, twenty years.

(5) For the construction of bridges of stone or concrete, or of iron superstructure, twenty years.

(6) For the original construction of streets or highways or the extension or widening of streets or highways, including land damages and the cost of pavement and sidewalks laid at the time of said construction, ten years.

(7) For the construction of stone, block, brick or other permanent pavement of similar lasting character, ten years.

(8) For macadam pavement under specifications approved by the Massachusetts Highway Commission, five years.

(9) For the construction of walls or dikes for the protection of highways or property, ten years.

(10) For the purchase of land for cemetery purposes, ten years.

(11) For such part of the cost of additional departmental equipment as is in excess of twenty-five cents per one thousand dollars of the preceding year's valuation, five years.

(12) For the construction of sidewalks of brick, stone, concrete or other material of similar lasting character, five years.

(13) For connecting dwellings or other buildings with public sewers, when a portion of the cost is to be assessed on the abutting property owners, five years.

(14) For the abatement of nuisances in order to conserve the public health, five years.

(15) For extreme emergency appropriations involving the health or safety of the people or their property, five years.

Debts may be authorized under the provisions of this section only by a vote of two thirds of the voters present and voting, or of two thirds of all the members of a city council or other governing body, taken by yeas and nays, and subject to the approval of the mayor, if such approval is required by the charter of the city.

SECTION 6. Cities and towns may incur debt, outside the limit of indebtedness prescribed in this act, for the following purposes and payable within the periods hereinafter specified: —

(1) For temporary loans under the provisions of sections three, four or nine, one year.

(2) For establishing or purchasing a system for supplying the inhabitants of a city or town with water, or for the purchase of land for the protection of a water system, or for acquiring water rights, thirty years.

(3) For the extension of water mains and for water departmental equipment, five years.

(4) For establishing, purchasing, extending or enlarging a gas or electric lighting plant within the limits of the territory within which such

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gas or electric lighting plant is authorized to distribute its product, twenty years; but the indebtedness so incurred shall be limited to an amount not exceeding in a town five per cent and in a city two and one half per cent of the last preceding assessed valuation of such town or city.[1]

(5) For acquiring land for the purposes of a public playground, as specified in section nineteen of chapter twenty-eight of the Revised Laws and amendments thereof, thirty years; but the indebtedness so incurred shall be limited to an amount not exceeding one half of one per cent of the last preceding assessed valuation of the city or town.

Debts for all of the purposes mentioned in this section shall be payable within the periods above specified from the date of the first issue of bonds or notes on account thereof, and may be incurred in accordance with the provisions of existing law, except in so far as the same are inconsistent with the provisions of this act. All other debts hereafter incurred by a city or town shall be reckoned in determining its limit of indebtedness, and debts authorized under the provisions of this section, except for temporary loans, may be incurred only by a vote of two thirds of the voters present and voting, or of two thirds of all the members of a city council or other governing body, taken by yeas and nays, and subject to the approval of the mayor, if such approval is required by the charter of the city.

SECTION 7. Cities and towns shall not incur debt for any purpose or for any period of time other than as specified in this act or in chapter six hundred and thirty-four of the acts of the year nineteen hundred and thirteen, and the proceeds of any sale of bonds or notes, except premiums, shall be used only for the purposes specified in the authorization of the loan. . . .

SECTION 12. Except as otherwise authorized by section six of this act, or by chapter six hundred and thirty-four of the acts of the year nineteen hundred and thirteen, a city shall not authorize indebtedness to an amount exceeding two and one half per cent, and a town shall not authorize indebtedness to an amount exceeding three per cent, on the average of the assessor's valuations of the taxable property for the three preceding calendar years, the valuations being first reduced by the amount of all abatements allowed thereon previous to the last day of December of the preceding calendar year.

SECTION 14. Cities and towns shall not issue any notes payable on demand. . . .

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[1] Amended by Chap. 115 of *General Acts of 1915*.

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BULLETIN No. 15

CONSTITUTIONAL RESTRICTIONS ON STATE DEBTS

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CONSTITUTIONAL RESTRICTIONS ON STATE DEBTS.

I. ORIGIN AND DEVELOPMENT OF CONSTITUTIONAL RESTRICTIONS ON STATE DEBTS.

The early constitutional restrictions on State indebtedness may be traced to the era of internal improvements during the first half of the nineteenth century. During this period the States had incurred large debts in order to construct canals, turnpikes and other enterprises, or had pledged their credit to private corporations for such purposes. In New York, for example, the State debt increased $7,737,770 in the period from 1817 to 1825, largely as a result of the construction of the Erie Canal, and continued to grow until in 1846 the total debt was about $28,000,000 and the annual interest charge over $1,400,000.[1] From 1825 on, the movement for internal improvements — especially canals — spread with renewed vigor throughout the country, with the result that the aggregate debt of all of the States increased from $60,000,000 in 1835 to $183,000,000 in 1839. Indiana, Illinois, Michigan, Arkansas, Florida and Mississippi had no debt in 1830; in 1840 their combined debt was more than $44,000,000.[2]

For a time there was little or no objection to this state of affairs, but following the crisis of 1837 and the failure of many enterprises it was necessary for the legislatures to levy high taxes in order to meet the situation. The immediate result was an awakening of public opinion. When the storm following the crisis of 1837 had subsided the State constitutions underwent a process of amendment which established limitations to prevent a repetition of former abuses.

The first State to include a constitutional restriction on State indebtedness was Rhode Island, which in 1842 provided

[1] Secrist, H., *An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States.* Bulletin of the University of Wisconsin, No. 637 (Madison, 1914), 28. See also Governor's Message, 1846, New York Assembly Document, No. 3, 25.

[2] Secrist, 16.

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that the Legislature should not incur debt to an amount exceeding $50,000 without the consent of the people except in time of war or insurrection.[1] Two years later New Jersey included a provision in her Constitution of 1844 which has served as the model for subsequent restrictions. It was provided that the Legislature should not contract debts which "singly or in the aggregate . . . at any time exceed $100,000 except for purposes of war or to repel invasion or to suppress insurrection, unless the same shall be authorized by a law for some single work or object, to be distinctly specified therein." Such a law, moreover, was required to provide ways and means, exclusive of loans, to pay the interest on the debt as it fell due, and to discharge the principal . . . within thirty-five years, and was not to take effect until it . . . had been submitted to the people at a general election, and had received the sanction of a majority of all the votes cast for and against it at such election.[2]

The improvidence of the Legislature in contracting debts led to the calling of a constitutional convention in New York, which in 1846 placed limitations upon the power of the Legislature of that State to incur further debts. In 1843 Michigan adopted an amendment restricting State borrowing; Louisiana in 1845; Iowa in 1846; Wisconsin and Illinois in 1848 and so on. The restrictions of the early constitutions were almost invariably adopted by the newer States as they came into the Union, so that to-day there are only four States — Massachusetts, Connecticut, New Hampshire, and Vermont — which do not impose limitations on the borrowing power of the Legislature.

II. NATURE OF RESTRICTIONS ON STATE INDEBTEDNESS.

The various State constitutions may be grouped into several general classes according to their respective methods of limiting State indebtedness. In the first group are those States which provide that no debt shall be created at all except to repel invasion or suppress insurrection, to pay or refund the previous liabilities of the commonwealth outstanding at the time the limitation was adopted, to supply deficiencies in revenues and

[1] *Rhode Island Constitution, 1842*, IV, 13.
[2] *New Jersey Constitution, 1844*, IV, Sec. 6, Paragraph 4.

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for extraordinary purposes. There are sixteen States which employ this method of limitation; namely, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Texas, Virginia, West Virginia and Wisconsin.[1]

In the second group of States no debt may be contracted unless approved by referendum, except for specified purposes such as repelling invasion, suppressing rebellion, etc. There are eight States which follow this plan; namely, Illinois, Iowa, Kentucky, New Mexico, New York, Oklahoma, South Carolina, and Washington. With this group should be included also the three States of Delaware, Maryland and North Carolina, whose constitutions prohibit the borrowing of money unless certain specified conditions are complied with, such as a special majority of the Legislature.

The third group of States, including Maine, Nebraska, Nevada, North Dakota, Oregon and South Dakota, fix a general sum varying from $50,000 to $300,000 and provide that debt in excess of such amounts shall not be incurred except for the special purposes above mentioned. The States of California, Idaho, Kansas, Montana, New Jersey and Rhode Island also fix certain limits in their respective constitutions, but provide that the maximum may be exceeded upon a referendum vote. Utah and Wyoming, instead of establishing a definite sum in the constitution, fix the limit of indebtedness at a certain percentage of the assessed value of taxable property in the State.

In addition to the above limitations practically all of the State constitutions have set up further checks on State indebtedness by specifying certain purposes for which the Legislature may not pledge the credit of the State, such as assuming any private debt, loaning credit to municipalities or to private corporations, contracting debt for internal improvements, or becoming stockholders in private corporations.[2]

Thus it is seen that all of the States except Massachusetts, Connecticut, New Hampshire and Vermont have provided in their constitutions for some kind of limitations on the borrow-

[1] Since the above statement was prepared, Massachusetts has adopted a constitutional amendment of this kind. See Appendix B.

[2] In Mississippi and Tennessee there are no restrictions on the borrowing power of the State other than those of this nature.

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ing power of the Legislature. It should be noted, however, that as a general rule there are no limitations on the amount of money which may be borrowed for repelling invasion, suppressing insurrection or defending the State or the United States in war.

Following is an analysis of the limitations as set forth in the various State constitutions.

1. States in which the Creation of a Debt is prohibited except for Certain Specified Purposes.

In sixteen States, including Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Louisiana, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Texas, Virginia, West Virginia and Wisconsin, no debt may be created by the Legislature except for certain specified purposes, as follows:[1] —

To repel Invasion, suppress Insurrection and defend the State in War. — In all of the above-mentioned States except Arkansas and Missouri exceptions are made in favor of borrowing for the purposes of repelling invasion, suppressing insurrection or defending the State in war.

To pay Existing Debt. — Also a majority of the States which prohibit the incurring of general indebtedness provide that debts may be created to pay obligations existing at the time the limitation was adopted or to refund bonds already issued.

The constitutions of Alabama, Georgia, Pennsylvania and Texas provide that the prohibition on State debt shall not prevent the borrowing of money to pay the "existing debt" of the State; nor of Ohio to redeem the present outstanding debt; nor of Virginia and West Virginia to redeem the previous liability of the State. In Florida the Legislature may issue bonds in order to refund at a lower rate of interest bonds already issued; in Missouri debts may be incurred for the renewal of existing bonds when they cannot be paid at maturity out of the sinking fund or otherwise. Under the Louisiana Constitution serial bonds may be issued by the Board of Liquidation of State

[1] Alabama, XI, 213; Arkansas, XVI, 1, 2; Colorado, XI, 3, 4, 5; Florida, IX, 6; Georgia, VII, Sec. III, 1, Sec. IV, 1; Indiana, X, 5; Louisiana, 46; Michigan, X, 10, 11; Minnesota, IX, 5, 6, 7, 8; Missouri, IV, 44-46; Ohio, VIII, 1, 2, 3; Pennsylvania, IX, 4, 5; Texas, III, 49; Virginia, XIII, 184; West Virginia, X, 4; Wisconsin, VIII, 4, 6, 7, 8, 9. For typical constitutional provisions see Appendix B.

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Debt to refund the specified bonded debt existing at the time of the constitutional limitation.[1] In Colorado there is specific authorization to contract debt not exceeding $2,115,000 to fund the outstanding State warrants and the interest thereon.

To supply Deficiencies of Revenue. — Also most of the States which prohibit the creation of debt except for certain purposes provide that temporary loans may be incurred to a limited amount varying from $100,000 to $1,000,000 in order to supply deficiencies of revenue or for temporary purposes. Such provisions are found in the constitutions of eleven of the sixteen States including Alabama, Colorado, Georgia, Indiana, Michigan, Missouri, Ohio, Oklahoma, Pennsylvania, Texas, Virginia and West Virginia. Temporary loans are generally justified on the grounds that the income and outgo of public funds never exactly offset each other and that it is better to anticipate taxes by loans than to constantly tamper with the tax rate.[2]

In Alabama temporary loans may be negotiated by the Governor for deficiencies in the treasury to the amount of $300,000, with the further limitation that no new loan is to be issued until the temporary loans to meet the total deficiency in the treasury are paid. In Colorado the amount of debt that may be incurred in any year to meet a deficit in the revenue may not exceed one-quarter of a mill on each dollar of taxable property and the aggregate amount of debt shall not at any time exceed three-quarters of a mill until the valuation equals $100,000,000, and after that time shall not exceed $100,000; in Georgia the amount is limited to $500,000 and must be paid out of taxes levied for the year in which the loan is made; in Michigan the limit is $250,000 in the aggregate; in Ohio indebtedness for deficiencies in revenue, together with that for expenses not provided for, is never to exceed $750,000 in the aggregate; in Pennsylvania the limit is $1,000,000 in the aggregate; in Texas, $200,000 in the aggregate; while in Missouri if more than $250,000 is borrowed for any year for deficiencies in revenue and for unforeseen emergencies, such action must be approved by referendum.

Extraordinary Expenditures. — In Minnesota and Wisconsin borrowing to meet extraordinary expenditures is excepted from

[1] *Constitution of Louisiana*, Sec. 324. [2] Secrist, 38.

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the general prohibition on State indebtedness; the debt which may be created for this purpose in Minnesota being limited to $250,000 in the aggregate; while in Wisconsin it may not exceed $100,000 and the law creating such debt must provide for the levying of a tax to pay the interest and the principal within five years.

Expenses not provided for. — In Ohio expenses not provided for may be met by borrowing.

Interest on State Debt. — Under the Indiana Constitution money may be borrowed to pay the interest on the State debt.

Unforeseen Emergencies. — In Missouri the State may contract debts to provide for unforeseen emergencies on the recommendation of the Governor; but if the amount for this purpose and for deficiencies in revenue exceeds $250,000 for any year, such debt may be provided for only by an act of the Legislature approved by popular referendum. If such debt is incurred without a referendum it is to be redeemed within two years from its creation; if by referendum within thirteen years.

Public Buildings. — Colorado makes a special exception in favor of borrowing money for the purpose of erecting buildings for the use of the State, with the proviso that the debt created for such purpose in any one year shall not exceed one-half mill on each dollar valuation of taxable property and shall not be more than $50,000 in the aggregate at any time unless approved by popular referendum, when the total amount of debt that may be incurred for public buildings may be increased to three mills of the taxable valuation.[1]

2. States in which the Creation of a Debt is prohibited except upon Referendum.

The States of Illinois, Iowa, Kentucky, New Mexico, New York, Oklahoma, South Carolina and Washington — eight in number — follow a still different method of limiting State indebtedness.[2] In these commonwealths no debt may be contracted by the Legislature except for certain specified purposes unless by a special law which must be referred to the voters

[1] *Constitution of Colorado*, XI, 3, 5.

[2] Illinois, IV, 18; Iowa, VII, 2–6; Kentucky, 49, 50; New Mexico, IX, 7, 8, 9, 15; New York, VII, 2–5; Oklahoma, X, 23–25; South Carolina, X, 7, 11; Washington, VIII, 1, 2, 3. For typical constitutional provisions see Appendix B.

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and approved by them at a general or special election. As a general rule there is no limit in these States upon the total amount that may be borrowed by approval of popular vote. New Mexico, however, is an exception, as no debt may be created in that State, even by referendum, if the total indebtedness would be made thereby to exceed one per cent of the assessed valuation of all property in the State.

The purposes for which debt may be contracted in this group of States without a referendum are as follows: —

To repel Invasion, suppress Insurrection or defend the State. — All of the State constitutions except that of South Carolina permit borrowing for such purpose without a referendum.

For Deficiencies in Revenues. — All of the States in this group likewise permit temporary loans for deficiencies in revenues without referendum to a limited amount varying from $200,000 to $1,000,000.[1]

Highways. — New York by a constitutional amendment of 1905 authorizes loans for the construction of highways without referendum, but such debts must never at any one time exceed $50,000,000.[2]

The States which require a referendum on State borrowing usually prescribe certain regulations as to submitting the question to the voters and as to the majority required for ratification. As a general rule the States which employ this method of restricting indebtedness provide that the statute proposing the creation of any debt shall be submitted at a general election. In New York, however, such an act cannot be submitted to the voters within three months of its passage by the Legis-

[1] *Iowa.* — Debt to meet deficiencies in revenues, together with that for expenses not provided for, may not exceed $250,000 in the aggregate exclusive of the State's obligation to make good the losses of permanent school or university funds by default.

Illinois. — Debt to meet deficiencies in revenues fixed at $250,000 unless exceeded by referendum.

Kentucky. — Debt to meet deficiencies in revenues limited to $500,000 unless exceeded by referendum.

New Mexico. — Debt to meet deficiencies, together with debt for necessary expenses, limited to $200,000 unless exceeded by referendum.

New York. — Debt to meet deficiencies, together with debt for expenses not provided for, not to exceed $1,000,000 in aggregate except by referendum.

Oklahoma and Washington. — Debt to meet deficiencies in revenues, together with that for expenses not provided for, not to exceed $400,000 in the aggregate unless by referendum. In Washington the State's obligations to make good the losses of educational funds by default are not to be included as a part of the debt thus limited.

South Carolina. — Money may be borrowed for ordinary and current business of the State without referring the same to the people. No limit on amount.

[2] *Constitution of New York*, Article VII, 12.

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lature, nor can it be presented at an election when any other law is referred to the people.[1]

As to the popular vote necessary for approval, a part of the States require a majority of all votes cast for and against the proposition.[2] The others require a special majority, which in Illinois is a majority of all votes cast at the same election for members of the general assembly; and in South Carolina a two-thirds majority of those voting on the question.

3. States in which Special Conditions must be complied with.

Delaware, North Carolina and Maryland, instead of requiring a referendum on State borrowing, provide that certain conditions shall be complied with before the debt may be created.[3] In Delaware no money is to be borrowed or debt created by the State unless pursuant to an act of the Legislature passed by three-fourths of the members elected to each house except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war or pay existing debts. Maryland uses a still different method which is not so rigid as that of the other States, the provision being that the Legislature may not contract debt unless by a law providing for the collection of a tax to pay the interest and discharge the principal within fifteen years, except that the Legislature may without levying such a special tax borrow $50,000 for temporary deficiencies and may contract debts to any amount in order to defend the State. In North Carolina the Legislature is prohibited from contracting new debt until the State's bonds shall be at par (except to supply a casual deficit or for suppressing insurrection or defending the State) without providing in the same law for a special tax to pay the interest annually.

[1] Illinois, IV, 18; Iowa, VII, 5; Kentucky, 50; New Mexico, IX, 8; New York, VII, 4; Oklahoma, X, 25; South Carolina, X, 11; Washington, VIII, 3.

[2] Iowa, Kentucky, New Mexico, New York, Oklahoma and Washington.

[3] Delaware, VIII, 3; Maryland, III, 34; North Carolina, V, 4.

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4. States in which the Aggregate Amount of the Debt is fixed in the Constitution.

The Constitutions of Arizona, Maine, Nebraska, Nevada, North Dakota, Oregon, South Dakota and Utah limit State indebtedness by fixing the aggregate amount of debt that may be contracted and provide that no greater indebtedness shall be incurred except for certain specified purposes.[1]

In Oregon the limit is $50,000; in Arizona $350,000; in Nebraska a maximum of $100,000 may be borrowed for casual deficits or failure in revenue; in South Dakota the limit is also $100,000, with the further limitation that debt to this amount may be created only for the purposes of defraying extraordinary expenses, making public improvements or meeting deficiencies in revenues; in North Dakota the aggregate debt limit is $200,000 for deficiencies in revenues or extraordinary emergencies and exclusive of the debt existing at the time the Constitution was adopted; while in Maine and Nevada the limit is $300,000 in the aggregate. In Utah debt may be incurred for casual deficits or failures in revenue and for necessary expenditures for public purposes to the amount of one and one-half per cent of the value of taxable property in the State.

As a general rule the States which fix definite limits in their constitutions provide that debts for certain specific purposes shall not be included within such limits and that the maximum debt may be exceeded for certain purposes as follows: —

Previous Debts not included. — The Constitutions of Nevada and South Dakota provide that the Territorial debts already assumed are not to be included in determining the aggregate debt limit. In North Dakota bonds issued to refund the existing debt are not to be continued as a part of the amount limited by the Constitution; while in Maine the limit does not refer to any moneys deposited with the State by the United States or any moneys held in trust for Indian tribes. The Maine Constitution also authorizes the State to issue bonds outside of the debt limit payable within twenty-one years

[1] Arizona, IX, 5; Maine, IX, 14, 15, 17; Nebraska, XII, 1; Nevada, IX, 3, XVII, 7; North Dakota, XII, 182; Oregon, XI, 7; South Dakota, XIII, 2, 3; Utah, XIV, 1, 2. For table showing amount of debt permitted in the States of this group see Appendix C.

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solely for the reimbursement of cities and towns for expenses incurred during the Civil War, provided that such bonds shall not exceed the total amount of $3,500,000.[1]

For Permanent Improvements. — In Oregon the debt limit of $50,000 may be exceeded by an amount not greater than two per cent of the assessed valuation of property in the State in order to build and maintain permanent roads; and in Maine debts for building and maintaining highways are not included within the limit. The Legislature of that State may authorize bonds not exceeding $2,000,000 at any one time to be devoted solely to the building and maintaining of State highways, the total amount of such bonds outstanding never to exceed $2,000,000.[2]

To repel Invasion, suppress Insurrection or defend the State in War. — The maximum debt limit may also be exceeded in practically all of the States for the purpose of repelling invasion, suppressing insurrection or defending the State in war.

5. States in which the Aggregate Debt Limit may be exceeded upon Referendum.

The Constitutions of California, Idaho, Kansas, Montana, New Jersey, Rhode Island and Wyoming also contain maximum debt limits, but provide that such limitations may be exceeded by a referendum vote.[3] In Rhode Island the limit is fixed at $50,000; in Montana and New Jersey at $100,000; in California $300,000. In Kansas the amount which may be borrowed for extraordinary expenses or for public improvements is set at $1,000,000; and in Idaho at $2,000,000, exclusive of the debt of the Territory at the time of its admission, and certain other specified debts. Wyoming employs a slightly different method of limitation. Except to suppress insurrection or to provide for the public defense the State is not to create any indebtedness exceeding one per cent of the assessed valuation of property in the State, with the further

[1] Maine, IX, 15.

[2] Maine, IX, 17, Amendment No. 14, adopted 1912.

[3] California, XVI, 1; Idaho, VIII, 1, amendment of 1912; Kansas, XI, 5, 6, 7; Montana, XIII, 2; New Jersey, IV, Sec. VI, 3, 4; Rhode Island, IV, 13; Wyoming, XVI, 1, 2. For typical constitutional provisions see Appendix B.

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provision that no indebtedness in excess of the taxes of the current year is to be created unless approved by the voters.[1]

Indebtedness beyond the above-mentioned amounts can be incurred in all of the States in this group only by a popular referendum, with the exception that money may usually be borrowed in excess of the limitation for the purpose of war, to repel invasion or suppress insurrection without such a referendum.

The constitutions of most of the States prescribe the method of referring the question to the voters and the popular majority required. As a general rule the law authorizing indebtedness in excess of the constitutional limitation must be submitted at a general election. In all of the States in this group except Kansas the vote required is merely a majority of those voting on the proposition; in Kansas the requirement is a majority of the vote cast at the election at which the act is submitted.

6. Prohibitions of Indebtedness for Certain Specified Purposes.

In the preceding analysis of State debt limits no attention has been given to constitutional restrictions against incurring debt for specific purposes. In addition to the general limitations on the borrowing power of the Legislature, practically all of the State constitutions except those of Massachusetts, Connecticut, New Hampshire and Vermont prohibit the Legislature from lending or pledging the public credit to private enterprises or to localities or both, with the additional limitation in most cases that the liabilities or debts of individuals, associations or corporations are not to be assumed by the State.[2] About one-third of the States in the Union provide

[1] For table showing amount of debt permitted see Appendix C.

[2] Alabama, IV, 93; XIII, 253; Arizona, IX, 7; X, Railroads, 5; Arkansas, XII, 12; XVI, 1; California, IV, 31; XII, 13; Colorado, XI, 1; Delaware, VIII, 4; Florida, IX, 10; Georgia, VII, Sec. V, 1 and Sec. VIII, 1; Idaho, VIII, 2; XII, 3; Illinois, IV, 20; IX, 13; Indiana, X, 6, 7; XI, 12; Iowa, VII, 1; VIII, 3; Kentucky, 176, 177; Louisiana, 58; Maine, IX, 14, 15; Maryland, III, 34; Michigan, X, 12, 13, 14; Minnesota, IX, 10; Mississippi, XIV, 258; Missouri, IV, 45, 46; Montana, V, 38; XIII, 4; Nebraska, XII, 3; Nevada, VIII, 9; IX, 4; New Jersey, IV, Sec. VI, 3; New Mexico, IX, 14; New York, VII, 1, 10; VIII, 9; North Carolina, V, 4; North Dakota, XII, 185; Ohio, VIII, 4, 5; Oklahoma, X, 14, 15; Oregon, XI, 8; Pennsylvania, IX, 6, 9; South Carolina, X, 6; South Dakota, XIII, 1; Tennessee II, 31; Texas, III, 50, 51; Utah, VI, 31; XIV, 6; Virginia, XIII, 185; Washington, VIII, 5; XII, 9; West Virginia, X, 6; Wisconsin, VIII, 3; Wyoming, III, 39; XVI, 6.

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that the public credit is not to be given to local units of government such as cities, towns, counties and other political subdivisions of the commonwealth. Approximately an equal number prohibit the State from assuming the indebtedness of such local governments unless such debts were incurred to repel invasion, suppress insurrection or defend the State.

A few of the States, however, make special exceptions in favor of lending State funds to individuals, associations or municipalities for educational and charitable purposes. In California, for example, the prohibition against pledging the State's credit to local communities or corporations does not prevent the Legislature from granting aid to institutions for the support of children or aged persons; or in New Mexico for the care of the indigent or for educational purposes; or in New York, North Dakota, South Dakota and Wyoming for the necessary support of the poor. Delaware and North Carolina also permit aid to private enterprises under certain restrictions, the Delaware Constitution providing that the State's credit may be pledged by an act of the Legislature passed by three-fourths of all the members elected to each house; while in North Carolina such assistance may be given if the approval of a popular majority of the persons voting on the proposition is secured.

Some of the States are not satisfied with general limitations against loaning State moneys to private corporations, but also include in their constitutions specific prohibitions against aid to railroads, canals and telegraph lines. Provisions of this nature are found in the Constitutions of Illinois, Montana, Minnesota, New Mexico, Utah and Wyoming. In Illinois, however, $20,000,000 in State bonds are authorized for the construction of the Illinois-Michigan canal,[1] while in New York the Legislature may authorize debts for the improvement of canals subject to popular approval. One State — Alabama — expressly prohibits the loaning of public credit to any banking company.

[1] *Illinois Constitution, 1870*, Amendment of 1908; Illinois and Michigan Canal separately submitted.

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7. Statutes authorizing Loans — Provisions, Term of Loans and Method of Payment.

The various State constitutions not only place limits upon the amount of money that may be borrowed by the State Legislature, but in some cases stipulate also the provisions that must be included in each law which authorizes public indebtedness. In this connection several State constitutions set forth the legislative majority that is required for an act authorizing indebtedness. In Alabama and Minnesota a two-thirds vote of the members of each house must be secured, and in Kansas, Kentucky, Virginia, and Wisconsin a majority of the members elected to each house. In Delaware the requirement is three-fourths of the members elected to each house except in the case of debts to supply casual deficiencies of revenue, repel invasion, defend the State in war or pay existing debts.

Purpose of Debt to be specified in Statute. — A common provision in States that require a referendum is *that each statute authorizing the creation of indebtedness in excess of the amount or purposes permitted by the constitution* must specify distinctly some single object or work for which the debt is to be created and also provide that the money so borrowed shall be used exclusively for such object and for no other.[1] Several other States require that *all laws creating indebtedness* shall contain such provisions.[2]

Provision for Payment of Interest and Principal. — Not only must the debt be authorized by a special law, but in a number of the States the Legislature is required to make special provision for the payment of the interest and the principal of the State debt.[3] In part of the States the statute authorizing the borrowing of money must itself provide for the levying of an annual tax or for some other means sufficient to pay the interest as it falls due and the principal at maturity, with the

[1] California, XVI, 1; Colorado, XI, 4; Idaho, VIII, 1; Iowa, VII, 5; Kansas, XI, 5, 6; Minnesota, IX, 5; New Jersey, IV, Sec. VI, 4; New York, VII, 4; North Dakota, XII, 182; Washington, VIII, 3.

[2] Delaware, VIII, 3; Georgia, VII, Sec. IV, 1; Kentucky, 178; Montana, XIII, 2; Nebraska, XII, 1; Oklahoma, X, 16; Pennsylvania, IX, 5; Wisconsin, VIII, 6, 7.

[3] Arizona, IX, 3; Georgia, VII, Sec. XIII, 1; Illinois, IV, 18; Indiana, X, 2; Maryland, III, 34; Nebraska, XII, 1; New York, VII, 4, 5, 11, 12; North Dakota, XI, 174; Ohio, VIII, 7-10; Pennsylvania, IX, 11, 12; South Carolina, X, 11; South Dakota, XI, 1; Utah, XIII, 2; Washington, VII, 1.

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additional requirement in several of the States that such provision shall be irrepealable until the debt is paid. In the other States the statute authorizing the borrowing of money does not necessarily have to include provisions for the payment of the interest and principal, but the Legislature must in some other definite manner make provision for these matters by taxation, or from general State funds or from the sale of public lands. In most State constitutions the funds set aside for the payment of the interest and principal of the State debt shall be used for such purposes alone and shall not be diverted to other uses. A few of the State constitutions, including those of California, Georgia, New Mexico, New York, Pennsylvania, Ohio and Virginia, establish sinking funds for the purpose of paying off the State debt.[1]

Length of State Loans. — A further regulation is found in a number of State constitutions prescribing the duration of permanent State loans varying from five years in Wisconsin to seventy-five in California.[2] Ordinarily no set duration is fixed in the constitutions for temporary loans. There are a few exceptions to this rule, however, as Missouri, which provides that a temporary loan to meet deficiencies in revenue cannot run for a longer period than two years; Minnesota and Colorado, which allow them to run for ten years, Wisconsin for five, and Nebraska for thirty years.

III. CONCLUSION.

The above analysis shows that constitutional restrictions upon State indebtedness resulted from the period of extensive internal improvements during the nineteenth century, and that they are practically universal, there being only four States which do not place some kind of limitation on the borrowing power of the Legislature. Although all of the constitutional provisions of this nature possess many points in common there is wide variation as to details and as to the strictness of regulation. At one extreme, for example, stands the Constitution of Delaware, which permits the Legislature to borrow money

[1] California, XVI, 1; Georgia, VII, Sec. XIV, 1; New Mexico, IX, 4, 8; New York, VII, 4, 5, 11, 12; Ohio, VIII, 2, 7-11; Virginia, XIII, 187.

[2] For table showing period during which State loans may run see Appendix E.

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provided only that a three-fourths vote of all members elected to each house is obtained, and the constitutions of States like Indiana, North Carolina and South Carolina, where the amounts that may be borrowed for temporary or ordinary purposes are not limited; and at the other extreme is Louisiana, which permits no borrowing at all over that necessary to repel invasion or suppress insurrection.

A common provision in debt limitations is that all loans above a certain fixed amount must be approved by popular vote, which is an example of the early use of the referendum for ordinary legislation. The amounts that may be borrowed for casual deficits or temporary loans vary widely among the different States, ranging from $50,000 in Oregon to $1,000,000 in States like New York, Pennsylvania and Kansas, while a few States place no limitations at all on the amounts that may be borrowed for such purposes. As a general practice also there are no limitations upon the amounts that may be borrowed to defend the State, repel invasion or suppress insurrection. There are a few exceptions to this rule, however, as Arkansas, Missouri, South Carolina and Tennessee make no provisions for loans for the public defense. The constitutions almost unanimously prohibit the States from lending credit to or becoming stockholders in private corporations — a type of limitation which grew up during the period of reaction against State aid to private undertakings.

As to recent tendencies there does not appear to be any marked change in the direction of making constitutional debt limits less rigid, and a comparison between early and recent State constitutions shows only a slight increase in the amounts that can be borrowed at the present time as against those of a half century ago. In the Michigan Constitution of 1850, for example, the maximum debt limit for deficits in revenue was $50,000; in the new Constitution of 1908 the maximum is fixed at $250,000, and no addition can be made to this under any circumstances, which seems to indicate that "there is little disposition to give the modern wealthy State more privileges with respect to the use of credit than were given to those of

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the forties and fifties."[1] New Mexico is another example of the tendency to continue rigid limitations on the borrowing power of the State, since the Constitution of 1911 prohibits any debt for purposes other than those allowed in the Constitution, by popular approval or otherwise, if the existing debt with certain exemptions would be made thereby to exceed one per cent of the assessed value of property in the State.

The tendency to restrict closely the borrowing power of the State government has its exceptions, however, in a few States such as California, New York, Illinois, etc. In New York, for example, provision has been made by constitutional amendment for an issue of bonds not exceeding $50,000,000 for the construction of county and State highways, while Illinois has authorized a $20,000,000 loan for the development of the Illinois-Michigan waterway.[2] These instances of extensive borrowing, nevertheless, are exceptions to the rule. "Looking at the period which has elapsed since the day of internal improvements, one sees little evidence of any distinct movement to make debt restrictions less rigid. Here and there changes have been made by increasing the duration of loans or the amounts that may be borrowed, or by occasional constitutional amendments, but these are relatively few."[3]

According to statistics compiled by the United States Bureau of the Census, the highest per capita net debt is in Massachusetts, where there are no constitutional restrictions, the per capita amount being $23.52 (1915). This heavy indebtedness is misleading without a word of explanation, for the Commonwealth has undertaken a number of functions which in other States are performed by the cities themselves. In 1915, $55,638,307 of the total net debt of $84,700,601 consisted of indebtedness which had been incurred by the State in providing for the metropolitan water and sewerage system, and for parks, etc. If allowance is made for this contingent indebtedness, which in reality belongs to the cities of the metropolitan district, the per capita net debt for State purposes is only $8.07, instead of $23.52 as recorded in the United States census report, thus indicating that it is not the absence of constitutional

[1] Secrist, 41.
[2] *Constitution of New York*, VII, 12; *Constitution of Illinois*, Amendment of 1908.
[3] Secrist, 42.

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limitations alone that explains Massachusetts' total net indebtedness of $84,700,601.[1]

The other States with relatively heavy debts are New York and Rhode Island, which require a referendum for indebtedness beyond that allowed in the constitution, the per capita net debts of these States being $12.73 and $10.27 respectively. Next in order are Maryland, with a per capita debt of $10.25; Virginia, $11.26; Louisiana, $10.99; California, $9.16; and Connecticut, $9.24. Of the latter States Connecticut is the only one whose constitution does not contain debt restrictions. Thus it is seen that exclusive of the debt for metropolitan purposes the per capita net indebtedness of Massachusetts is slightly less than that of any of the above-mentioned States. The States with the lowest per capita debts are New Jersey and Pennsylvania, in which the per capita net debt is only $0.04; while Iowa, Nebraska, Oregon and South Dakota have no indebtedness at all if the sinking fund assets on hand are offset against the debt outstanding.[2]

A comparison of the average per capita net debts of the several groups of States classified according to the method of restricting indebtedness shows that those states in which the aggregate amount of indebtedness, except for certain specified purposes, is fixed in the constitution have the lowest average, which is $2.32 per capita. In Delaware, Maryland and North Carolina, which have rather liberal provisions, it is $5.87; while in Massachusetts, Connecticut, New Hampshire and Vermont, where there are no constitutional debt limits whatever, the average per capita indebtedness is $5.70.[3] No definite conclusions, however, can be drawn as to which method of limitation places the greatest restriction on indebtedness, since there is a wide variation among the debts of States with the same system of regulation. In fact it appears that differences in public wealth, whether or not the State has financed local

[1] Total net State debt of Massachusetts, 1915, . . . $84,700,601 $23.52 per capita.
Net contingent debt (for metropolitan sewer, water, etc.), . 55,638,307 15.45 per capita.
Net direct debt (actual State debt), ... $29,062,294 $8.07 per capita.
For further explanation of Massachusetts debt see Appendix C.

[2] Figures are for 1915 and are from report of United States Bureau of Census, Financial Statistics of Cities, 1915, 118–123.

[3] For table of per capita net indebtedness, see Appendix C. For table of highest and lowest per capita debts see Appendix C.

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improvements, and the ease with which the constitution may be amended so as to authorize additional loans for special purposes, must be taken into consideration in each case where comparison is attempted.

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APPENDIX A.

REFERENCES TO CONSTITUTIONAL PROVISIONS RESTRICTING STATE DEBT.

Alabama, IV, 93; XI, 213; XIII, 253.
Arizona, IX, 3, 5, 7.
Arkansas, XII, 12; XVI, 1–2.
California, IV, 31; XII, 13; XVI, 1.
Colorado, XI, 1–5.
Connecticut, none.
Delaware, VIII, 3–4.
Florida, IX, 6, 10.
Georgia, VII, Secs. III, 1; IV, 1; VIII, 1; XIII, 1; XIV, 1.
Idaho, VIII, 1–2; XII, 3.
Illinois, IV, 18, 20; IX, 13.
Indiana, X, 2, 5–7; XI, 12.
Iowa, VII, 1–6; VIII, 3.
Kansas, XI, 5–7.
Kentucky, 49, 50, 176, 177.
Louisiana, 46, 58, 324.
Maine, IX, 14, 15, 17.
Maryland, III, 34.
Massachusetts, none.[1]
Michigan, X, 10–14.
Minnesota, IX, 5–8.
Mississippi, XIV, 258.
Missouri, IV, 44–46.
Montana, XIII, 1–4; V, 38.
Nebraska, XII, 1, 3.
Nevada, VIII, 9; IX, 3, 4; XVII, 7.
New Hampshire, none.
New Jersey, IV, Sec. VI, 3, 4.
New Mexico, IX, 4, 7–9, 14–15.
New York, VII, 1–5, 10–12.
North Carolina, V, 4.
North Dakota, XI, 174; XII, 182, 185.
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[1] For the constitutional amendment adopted in 1918, see Appendix B.

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APPENDIX B.

TYPICAL CONSTITUTIONAL PROVISIONS.

TYPICAL CONSTITUTIONAL PROVISIONS PROHIBITING DEBT EXCEPT FOR SPECIFIED PURPOSES.

Michigan — Article X, Sections 10 to 14.

SEC. 10. The State may contract debts to meet deficits in revenue, but such debts shall not in the aggregate at any time exceed two hundred fifty thousand dollars. The State may also contract debts to repel invasion, suppress insurrection, defend the State or aid the United States in time of war. The money so raised shall be applied to the purposes for which it is raised or to the debts contracted.

SEC. 11. No scrip, certificate or other evidence of State indebtedness shall be issued, except for such debts as are authorized in this Constitution.

SEC. 12. The credit of the State shall not be granted to, nor in aid of any person, association or corporation.

SEC. 13. The State shall not subscribe to, nor be interested in the stock of any company, association or corporation.

SEC. 14. The State shall not be a party to, nor be interested in any work of internal improvement . . . except in the improvement of, or aiding in the improvement of the public wagon roads, in the reforestation and protection of lands owned by the State and in the expenditure of grants to the State of land or other property.

Ohio — Article VIII, Sections 1 to 5.

SEC. 1. The State may contract debts to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, . . . shall never exceed $750,000, and the money arising from the creation of such debts shall be applied to the purpose for which it was obtained or to repay the debts so contracted and to no other purpose whatever.

SEC. 2. In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to redeem the present outstanding indebtedness of the State; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts incurred to redeem the present out-

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standing indebtedness of the State shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

SEC. 3. Except the debts above specified in sections one and two of this article, no debt whatever shall be created by or on behalf of the State.

SEC. 4. The credit of the State shall not in any manner be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State hereafter become a joint owner, or stockholder in any company or association . . . formed for any purpose whatever.

SEC. 5. The State shall never assume the debts of any county, city, town or township, or of any corporation whatever unless such debts shall have been created to repel invasion, suppress insurrection, or defend the State in war.

Massachusetts — Amendment adopted November 5, 1918.

SECTION 1. The credit of the Commonwealth shall not in any manner be given or loaned to or in aid of any individual, or of any private association, or of any corporation which is privately owned and managed.

SECTION 2. The Commonwealth may borrow money to repel invasion, suppress insurrection, defend the Commonwealth, or to assist the United States in case of war, and may also borrow money in anticipation of receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created.

SECTION 3. In addition to the loans which may be contracted as before provided, the Commonwealth may borrow money only by a vote, taken by the yeas and nays, of two-thirds of each house of the General Court present and voting thereon. The Governor shall recommend to the General Court the term for which any loan shall be contracted.

SECTION 4. Borrowed money shall not be expended for any other purpose than that for which it was borrowed or for the reduction or discharge of the principal of the loan.

TYPICAL CONSTITUTIONAL PROVISIONS REQUIRING A REFERENDUM FOR CREATION OF DEBT.

Illinois — Article IV, Sections 18, 20.

SEC. 18. . . . . the State may to meet casual deficits or failures in revenues contract debts, never to exceed in the aggregate two hundred and fifty thousand dollars, and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debt thus created, and to no other purpose; and no other debt, except for the purpose of repelling invasion, suppressing insurrection or defending the State in war . . . shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people and have received a majority of the votes cast for members of the General Assembly at such election.

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The General Assembly shall provide for the publication of said law for three months, at least, before the vote of the people shall be taken upon the same; and provision shall be made, at the time, for the payment of the interest annually, as it shall accrue, by a tax levied for the purpose, or from other sources of revenue, which law . . . shall be irrepealable until such debt be paid: And provided further that the law levying the tax shall be submitted to the people with the law authorizing the debt to be contracted.

SEC. 20. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to, or in aid of, any public or other corporation, association or individual.

New York — Article VII, Sections 1, 2, 3, 4, 12.

SEC. 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

SEC. 2. The State may to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debt so contracted, and to no other purpose whatever.

SEC. 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised . . . and to no other purpose whatever.

SEC. 4. Except the debts specified in sections two and three of this article no debts shall be hereafter contracted by or in behalf of this State, unless such debt shall be authorized by law for some single work or object to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all votes cast for and against it at such election. . . . The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage or at any general election when any other law, or any bill, shall be submitted to be voted for or against.

SEC. 12. A debt or debts of the State may be authorized by law for the improvement of highways. . . . The aggregate of the debts authorized by this section shall not at any one time exceed the sum of fifty

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millions of dollars. . . . None of the provisions of the fourth section of this article shall apply to debts for the improvement of highways hereby authorized.

Oklahoma — Article X, Sections 14–16 and 23–25.

SEC. 14. Except as required by the enabling act, the State shall not assume the debt of any county, municipal corporation, or political subdivision of the State, unless such debt shall have been contracted to defend itself in time of war, to repel invasion, or to suppress insurrection.

SEC. 15. The credit of the State shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State; nor shall the State become an owner or stockholder in nor make donation by gift, subscription to stock, by tax or otherwise, to any company, association or corporation.

SEC. 16. All laws authorizing the borrowing of money by and on the behalf of the State, county, or other political subdivision of the State, shall specify the purpose for which the money is to be used, and the money so borrowed shall be used for no other purpose.

SEC. 23. The State may to meet casual deficits or failure in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed four hundred thousand dollars, and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained or to repay the debts so contracted, and to no other purpose whatever.

SEC. 24. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or to defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

SEC. 25. Except the debts specified in sections twenty-three and twenty-four of this article, no debts shall hereafter be contracted by or on behalf of the State, unless such debts shall be authorized by law for some work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due and also to pay and discharge the principal of such debt within twenty-five years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by the yeas and nays to be duly entered on the journals thereof. . . .

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Typical Constitutional Provisions prescribing Aggregate Amount of Debt.

Maine — Article IX, Sections 14, 15, 17.

Sec. 14. The credit of the State shall not be directly or indirectly loaned in any case. The Legislature shall not create any debt or debts, liability or liabilities, on behalf of the State, which shall singly, or in the aggregate, with previous debts and liabilities hereafter incurred at any one time, exceed three hundred thousand dollars, except to suppress insurrection, to repel invasion, or for purposes of war; but this amendment shall not be construed to refer to any money that has been or may be deposited with this State by the United States, or to any fund which the State shall hold in trust for any Indian tribe.

Sec. 15. The State is authorized to issue bonds payable within twenty-one years, at a rate of interest not exceeding six per cent. a year, payable semi-annually, which bonds or their proceeds shall be devoted solely toward the reimbursement of the expenditures incurred by the cities, towns and plantations of the State for war purposes during the Rebellion. . . . The issue of bonds hereby authorized shall not exceed in the aggregate three million five hundred thousand dollars, and this amendment shall not be construed to permit the credit of the State to be directly or indirectly loaned in any other case or for any other purpose.

Sec. 17. The Legislature may authorize the issuing of bonds not exceeding two million dollars in amount at any one time, payable within forty-one years, . . . which bonds or their proceeds shall be devoted solely to the building and maintaining of State highways; provided, however, that bonds issued and outstanding under authority of this section shall never in the aggregate exceed two million dollars. . . .

Oregon — Article XI, Sections 6, 7, 8.

Sec. 6. The State shall not subscribe to or be interested in the stock of any company, association, or corporation.

Sec. 7. The Legislative Assembly shall not lend the credit of the State nor in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war or to repel invasion or suppress insurrection or to build or maintain permanent roads; and the Legislative Assembly shall not lend the credit of the State nor in any manner create any debt or liabilities to build and maintain permanent roads which shall singly or in the aggregate with previous debts or liabilities incurred for that purpose exceed two per cent of the assessed valuation of all property in the State; and every contract of indebtedness entered into or assumed by or on behalf of the State in violation of the provisions of this section shall be void and of no effect. (The foregoing section was proposed as an

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amendment by initiative petition and adopted by vote of the people on November 5, 1912 by a vote of 59,542 to 43,447.)

SEC. 8. The State shall never assume the debts of any county, town or other corporation whatever, unless such debts shall have been created to repel invasion, suppress insurrection or defend the State in war.

TYPICAL CONSTITUTIONAL PROVISIONS PERMITTING AGGREGATE DEBT LIMIT TO BE EXCEEDED BY POPULAR REFERENDUM.

New Jersey — Article IV, Section VI.

SEC. VI, PAR. 3. The credit of the State shall not be directly or indirectly loaned in any case.

SEC. VI, PAR. 4. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, of the State which shall singly or in the aggregate with any previous debts or liabilities, at any time exceed one hundred thousand dollars, except for purposes of war, or to repel invasion, or to suppress insurrection, unless the same shall be authorized by a law for some single object or work to be distinctly specified therein; which law shall provide the ways and means exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within thirty-five years from the time of the contracting thereof, and shall be irrepealable until such debt or liability, and the interest thereon, are fully paid and discharged, and no such law shall take effect until it shall, at a general election have been submitted to the people and have received the sanction of a majority of all the votes cast for and against it at such election; and all money to be raised by the authority of such law shall be applied only to the specific object stated therein, and the payment of the debt thereby created. This section shall not be construed to refer to any money that has been, or may be, deposited with this State by the government of the United States.

Rhode Island — Article IV, Section 13.

SEC. 13. The General Assembly shall have no power, hereafter, without the express consent of the people, to incur debts to an amount exceeding fifty thousand dollars, except in time of war, or in case of insurrection or invasion; nor shall they in any case, without such consent, pledge the faith of the State for the payment of the obligations of others. This section shall not be construed to refer to any money that may be deposited with this State by the government of the United States.

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APPENDIX C.

TABLES SHOWING PER CAPITA DEBTS OF STATES, 1915.[1]

Indebtedness of States which prohibit Debt except for Specified Purposes.

State.	Gross Debt, 1915.		Net Debt, 1915.[2]	
	Total.	Per Capita.	Total.	Per Capita.
Alabama,	$14,365,059	$6 35	$13,352,055	$5 90
Arkansas,	2,043,393	1 21	1,202,641	71
Colorado,	5,172,725	5 73	3,631,837	4 02
Florida,	3,152,617	3 72	601,567	71
Georgia,	6,678,185	2 40	6,534,202	2 35
Indiana,	1,870,176	67	1,051,106	38
Louisiana,	19,943,529	11 24	19,497,722	10 99
Michigan,	6,972,048	2 33	6,905,655	2 30
Minnesota,	2,800,469	1 27	2,603,000	1 18
Missouri,	7,570,351	2 24	7,308,339	2 17
Ohio,	34,197,017	6 81	5,202,264	1 04
Pennsylvania,	1,699,657	21	312,016	04
Texas,	5,017,955	1 19	4,077,500	96
Virginia,	24,929,471	11 62	24,142,898	11 26
West Virginia,	1,151,987	86	–	–
Wisconsin,	2,278,637	93	2,251,000	91
Average,	–	–	–	$2 80

Indebtedness of States which prohibit Debt except for Specified Purposes unless allowed by Referendum.

Illinois,	$3,236,900	$0 54	$2,066,350	$0 35
Iowa,	503,379	23	–	–
Kentucky,	5,666,611	2 40	2,431,845	1 03
New Mexico,	2,643,496	6 91	1,028,252	2 69
New York,	162,503,119	16 49	125,461,557	12 73
Oklahoma,	7,237,117	3 50	6,519,810	3 15
South Carolina,	6,554,318	4 12	5,399,793	3 40
Washington,	3,128,181	2 25	293,024	21
Average,	–	–	–	$2 94

[1] Tables compiled from *Financial Statistics of States, 1915*, United States Bureau of Census, 1916, Table 24, 118–119.

[2] Net debt consists of outstanding indebtedness less sinking fund assets.

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Indebtedness of States in which Aggregate Amount of Debts is fixed in Constitution unless exceeded by Referendum.

State.	Gross Debt, 1915.		Net Debt, 1915.[1]	
	Total.	Per Capita.	Total.	Per Capita.
California,	$28,428,843	$10 14	$25,666,382	$9 16
Idaho,	2,493,251	6 37	1,451,193	3 71
Kansas,	984,290	55	80,361	04
Montana,	2,542,003	5 89	1,271,899	2 95
New Jersey,	594,003	21	116,000	04
Rhode Island,	8,988,743	15 20	6,072,046	10 27
Wyoming,	268,511	1 60	111,000	66
Average,	–	–	–	$3 83

Indebtedness of States in which Aggregate Amount of Debt is fixed in Constitution.

Arizona,	$3,319,048	$13.65	$910,972	$3 75
Maine,	2,328,479	3 05	2,135,467	2 80
Nebraska,	900,456	72	–	–
Nevada,	962,670	9 75	680,000	6 89
North Dakota,	771,228	1 10	548,366	78
Oregon,	244,665	32	–	–
South Dakota,	701,713	1 05	–	–
Utah,	2,889,866	6 98	1,790,000	4 33
Average,	–	–	–	$2 32

Indebtedness of States in which Certain Conditions must be complied with.

Delaware,	$873,493	$4 16	$746,815	$3 56
Maryland,	19,699,594	14 72	13,719,576	10 25
North Carolina,	9,035,808	3 87	8,878,600	3 80
Average,	–	–	–	$5 87

Procedure required for incurring debt: —
Delaware: Three-fourths legislative majority.
Maryland: Special tax to be levied.
North Carolina: Special tax to be levied.

[1] Net debt consists of outstanding indebtedness less sinking fund assets.

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Indebtedness of States in which the only Limitations are against lending Credit to Private Enterprise.

State.	Gross Debt, 1915.		Net Debt, 1915.[1]	
	Total.	Per Capita.	Total.	Per Capita.
Mississippi,	$5,146,390	$2 72	$5,126,292	$2 70
Tennessee,	15,076,992	6 69	14,878,534	6 60
Average,	–	–	–	$4 65

Indebtedness of States in which there are no Constitutional Restrictions.

Massachusetts,[2]	$128,279,247	$35 62	$29,062,294	$8 07[2]
Connecticut,	11,128,774	9 29	11,064,000	9 24
New Hampshire,	2,578,370	5 89	1,961,117	4 48
Vermont,	855,247	2 36	370,893	1 02
Average,	–	–	–	$5 70

Analysis of Massachusetts' State Debt.

Gross State debt:[3] —	
Total,	$128,279,247 00
Per capita,	35 62
Total net State debt:[4] —	
Total,	84,700,601 00
Per capita,	23 52
True net State debt:[5] —	
Total,	29,062,294 00
Per capita,	8 07

[1] Net debt consists of outstanding indebtedness less sinking fund assets.

[2] Net debt of Massachusetts consists of gross debt less sinking fund assets, and is exclusive of the debt for water, sewers, parks and abolition of grade crossings in the Metropolitan District.

[3] Consists of total outstanding debt of State for State and metropolitan district purposes plus sinking funds.

[4] Consists of total outstanding debt of State less sinking fund assets.

[5] This is the true State debt for State purposes, and consists of the net State debt less the indebtedness carried for the metropolitan water, sewer and park systems, which should be credited to cities.

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States with Highest Per Capita Debt.

State.	Per Capita Net Debt.	State.	Per Capita Net Debt.
New York,	$12 73	Connecticut,	$9 24
Rhode Island,	10 27	Massachusetts: —	
Maryland,	10 25	Total net State debt,	23 52
Virginia,	11 26	Net debt for State purposes alone,	8 07
Louisiana,	10 99		
California,	9 16		

States with Lowest Per Capita Debt.

South Dakota,	–	Iowa,	–
West Virginia,	–	New Jersey,	$0 04
Nebraska,	–	Pennsylvania,	04
Oregon,	–	Kansas,	04

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APPENDIX D.

AMOUNT OF INDEBTEDNESS PERMITTED IN STATES WHICH FIX DEBT LIMITS IN THEIR CONSTITUTIONS.

Not to be exceeded except for Specified Purposes.

STATE.	Amount allowed by Constitution.
Arizona,	$350,000
Maine,	300,000
Nebraska,	100,000
Nevada,	300,000
North Dakota,	200,000
Oregon,	50,000
South Dakota,	100,000
Utah,	—[1]

May be exceeded by Referendum.

California,	$300,000
Idaho,	2,000,000
Kansas,	1,000,000
Montana,	100,000
New Jersey,	100,000
Rhode Island,	50,000
Wyoming,	—[2]

[1] 1½ per cent of assessed valuation. [2] Amount not greater than taxes of current year.

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APPENDIX E.

TERM OF LOANS.

STATE.	Duration of Loans (Years).
California,	75
Colorado,	10 to 15
Idaho,	20
Iowa,	20
Kentucky,	30
Maryland,	15
Minnesota,	10
Missouri,	13
Nevada,	20
New Jersey,	35
New Mexico,	50
New York,	50
Oklahoma,	25
South Carolina,	40
South Dakota,	10
Washington,	20
Wisconsin,	5

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BULLETIN No. 16

THE SELECTION AND RETIREMENT OF JUDGES

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PREFATORY NOTE.

This pamphlet is taken from Bulletin IV, A, of the American Judicature Society's bulletins, and was prepared under the direction of the Board of Directors of that organization, consisting of the following: Harry Olson, Chairman, Chief Justice of the Municipal Court of Chicago; Woodbridge N. Ferris, Governor of Michigan; James Parker Hall, Dean of the University of Chicago Law School; Edward W. Hinton, Member of the Faculty of the University of Chicago Law School; Frederick Bruce Johnstone, of the Chicago Bar; Albert M. Kales, of the Chicago Bar and Professor of Law in the Harvard Law School; Frederick W. Lehmann, of the St. Louis Bar, former President of the American Bar Association, former Solicitor General of the United States; Nathan William MacChesney, of the Chicago Bar, President of the Illinois Commission on Uniform State Laws; Roscoe Pound, Carter Professor of General Jurisprudence and Dean of the Harvard Law School; John H. Wigmore, Dean of the Northwestern University School of Law; John B. Winslow, Chief Justice of the Wisconsin Supreme Court; and Herbert Harley, Secretary of the American Judicature Society. The parts here printed constitute the final revision of matter that was put in tentative form and sent out to several hundred of the associate members of the Judicature Society located in all parts of the United States. A large proportion of these associate members sent in extensive criticisms of the matter which had been received by them, and from those criticisms and suggestions the draft which is now submitted was revised. The Judicature Society also had direct investigations made by Mr. Harley, more particularly of the methods of the selection and retirement of judges in Wisconsin. Several members of the Board had a close and intimate knowledge of the methods of selecting and retiring judges in the city of Chicago and the State of Illinois. Those parts of

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the present bulletin which state conditions in Wisconsin and Chicago may be regarded as direct testimony by witnesses who are personally familiar with the conditions spoken of.

It should be noted that this bulletin is a close analysis of facts from which all personal opinion and all bias in favor of any one scheme over another is carefully eliminated. The third plan set forth is to a slight extent discussed argumentatively. The reason for this is solely because it was being presented as a possible alternative to the method of electing judges for short terms which obtains generally in the Mississippi Valley.

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THE SELECTION AND RETIREMENT OF JUDGES.

INTRODUCTORY — FOUR PLANS.

From the suggestions received from the members of the Society's Council with regard to the First Draft of an Act to establish a Model Court for a Metropolitan District (Bulletin IV), three types of opinion stand out clearly.

First. — From certain Eastern States, where judges are appointed by the Governor and hold during good behavior, subject only to impeachment and possibly also, as in Massachusetts, to legislative removal, we find a strong belief expressed that this is a satisfactory method of selecting and retiring judges and should not be disturbed.

Second. — In the Middle West, where the plan of election for short terms prevails, we are told that the people generally hold an ineradicable belief favorable to the selection and retirement of judges by popular vote — that no scheme for the selection and retirement of judges need be put forward which does not embrace these features.

Third. — More particularly from the larger metropolitan districts of the Middle West, where the plan of the election of judges for short terms has been in force during a period of rapid and enormous growth, we have found a strongly expressed and widespread dissatisfaction with the results obtained, coupled at the same time with a lack of enthusiasm for appointment by the Governor.

For the purpose of satisfying each of these types of opinion the directors have had plans prepared for the selection and retirement of judges.

The first plan adopts the general principle of appointment by the Governor of judges to hold during good behavior and subject to retirement only by impeachment or by legislative removal. This is the Massachusetts plan.

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The second plan is that of the selection and retirement of judges by popular vote and their retirement also by impeachment, legislative action and action of the judicial council for cause shown and after hearing. In dealing with this plan the directors have endeavored to analyze the causes for dissatisfaction with it and to consider what improvements can be made without a departure from the principle of selection and retirement by election.

The third plan is to accommodate a community that is dissatisfied with the selection of judges by election, but does not care for appointment by the Governor and which still regards the popular control of judges by exposing them to a retirement election essential. This plan calls for the election of the chief justice at short intervals — say every four years — and the selection of the associate judges by the appointment of the chief justice. The associate judges are to hold for an indefinite period, subject, however, to retirement in any one of the following ways: (1) impeachment; (2) legislative removal; (3) removal by the judicial council for cause shown and after a hearing; (4) at regular intervals of three, nine and eighteen years from the date of appointment each judge is required to submit to a retirement election at which the only question is "Shall the judge be continued in office?" If the judge be retired his place is then to be filled by the appointment of the chief justice.

The fourth plan is the same as the third, except that the retirement election is eliminated, leaving the associate judges to be appointed by the chief justice subject to retirement by impeachment, legislative removal and removal by the judicial council for cause shown and after a hearing.[1]

[1] The various elements of these plans may be combined in a great variety of ways. For instance, it is now proposed in California that the constitution be amended to provide for selecting judges in the following manner: appointment by the Governor to the office of justice of the Supreme Court and of the District Courts of Appeal for the term of twelve years, and to the office of judge of the Superior Court for the term of six years; appointments to be made in July to take effect the first day of January; appointees to be subject to confirmation by the electors of the State, of the district, or of the county (or city) respectively. An appointee who fails of confirmation is ineligible for appointment to fill the vacancy thus created. The submission of the name shall be at the general State election following appointment and shall be in the following form: "Shall appointment of [name of person appointed] as [title of office] be confirmed?" with the words "yes" and "no" and appropriate spaces for the voter's mark. (See Cal. Sen. Constitutional Amendment No. 1.) The judicial recall now in effect in California will not be disturbed if this measure is adopted.

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First Plan.

APPOINTMENT BY THE GOVERNOR AND RETIREMENT BY IMPEACHMENT, OR REMOVAL BY THE GOVERNOR UPON THE ADDRESS OF BOTH HOUSES OF THE LEGISLATURE – THE MASSACHUSETTS PLAN.

This plan follows the provision of the Massachusetts Constitution, Ch. III, Art. I. A similar provision appears in the English Judicature Act of 1873, Sec. 5.

It is often overlooked that the English judges are subject to be removed not only by impeachment but by the mere address of both houses of Parliament. Such an address may be made upon the mere majority vote of each house. No trial is required and no cause for removal need be shown. This, in fact, places every English judge at the mercy of the ministers in power so far at least as the vote of the House of Commons is concerned. Since the Lord Chancellor is a member of the cabinet in power he has a very real disciplinary authority over every English judge, for he is in a position to bring the conduct of any judge before the cabinet and to use great influence in favor of taking a vote in the House of Commons to recall the judge. This is the English equivalent for the popular recall of judges. It is a recall initiated by the executive, which in this case includes the Lord Chancellor, who is the head of the judiciary, subject only to the veto of the House of Lords.

The Illinois Constitution permits the General Assembly for cause entered on the journal, upon due notice and opportunity of defense, to remove from office any judge upon the concurrence of three-fourths of all the members elected of each house.

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Second Plan.

SELECTION AND RETIREMENT OF JUDGES BY POPULAR VOTE.

The plan of selection and retirement of judges by popular vote, as now worked out in a large proportion of States, means the election of judges for a term of years. At the end of each term there is in form at least an opportunity to retire the sitting judge if he is a candidate for re-election and also an opportunity to select another judge by popular vote.

This system has been in force for many years in many of our largest States. There is a sufficient volume of dissatisfaction with the results to warrant a careful analysis and scrutiny of this method of selecting and retiring judges.

Election for a Term is not only a Method of Selecting Judges, but also a Method of Recalling them by Popular Vote.

When a place on the bench is vacant by the death or resignation of a judge, or his refusal to run again, the election presents a mode of selection simply. When the sitting judge seeks another term, the first and principal question usually is: "Shall he be retired from office by popular vote?" If so, a question of selection arises, since some one must be put in his place.

No analysis for the causes of dissatisfaction with the plan of electing judges for terms of years can be made without keeping distinct the operation of the election as a selecting process and its function as a retiring process. The performance of the selective function must be analyzed by itself and causes for dissatisfaction with it ascertained and if possible eliminated. Then the performance of the retiring function must be analyzed by itself and the causes for dissatisfaction with it ascertained and if possible eliminated.

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Selection of Judges.

In Actual Operation the Elective System does not enable the Electorate to exercise the Selective Function.

Knowledge of the fitness of individuals to perform the difficult functions of the office of judge must be known before anything like selection is possible.

How can an electorate of a hundred thousand and upwards out of a population of half a million and upwards have any sufficient knowledge upon which to make a selection from among the lawyers of persons to fill judgeships?

It is obviously impossible for an electorate of any such size, or even different parts of such an electorate, to have any collective idea of those among the lawyers whom it wishes to act as judges. It is even more clear that the electorate can have no collective idea of the qualifications of different lawyers for exercising the judicial function. It would be a problem for a single individual who had an extensive knowledge of lawyers and who observed them closely for a considerable period in the practice of their profession.

We have gotten past thinking that any lawyer can be a judge. In metropolitan centers particularly we have come to the view that to be a successful and efficient judge requires a highly trained professional expert. The electorate would not think of undertaking to select at a general election the engineer who is to design a bridge upon which thousands of the population each day must pass in safety. It is quite as absurd for an electorate to attempt a selection of the very special talents which are required in a judge in passing upon the rights to life, liberty and property of thousands of citizens.

Furthermore, lawyers who are willing to become candidates for a judgeship have, as a general rule, no real popular following in an electorate of any considerable size. Few judges, after they have been on the bench, have any such popular following that they can be said to be a popular choice. The position of a single judge in a district containing one hundred thousand voters and upwards is ordinarily too inconspicuous to enable any man who is willing to occupy the place to secure a popular following. A lawyer or a judge who secures a real hold upon

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the majority of a numerous electorate will inevitably be led to a candidacy for offices of greater political importance than a judgeship.

What happens when the Electorate is given the Task of Selecting Judges, which it cannot possibly perform, is this: in Order to avoid Complete Chaos some Sort of a De Facto Method of Appointment is devised.

For instance, in Wisconsin, they have developed a *de facto* method of appointment by the lawyers and the Governor. The way the election of judges works out in Wisconsin is thus described by Herbert Harley, secretary of the American Judicature Society, as a result of his personal investigations:

A strong tradition has been built up in Wisconsin of re-electing sitting judges. This means, and the actual fact is, that vacancies on the bench occur almost wholly by death or resignation by the incumbent. When this happens the bar (and that means the leaders among the bar) at once set about to fill the office. The qualifications of various lawyers are discussed in a semi-public manner. There is sufficient decorum so that candidates do not come forward personally to advance their claims. A bar primary is then held, all the candidates having a fair chance. The bar, as a whole, accepts the result and regardless of party, supports the winner. The actual power of appointment for the unexpired term rests with the Governor. He, however, is expected to, and customarily does in fact, appoint the man recommended by the bar. When election day comes around the judge so appointed is supported by the bar regardless of party, because he was originally the nominee of the bar and because he is a sitting judge. He is regularly thereafter supported at elections until he dies or resigns. So strong is the tradition and feeling in favor of electing and re-electing judges who have been appointed originally in the manner described, that sitting judges will prevail even against candidates who are admittedly abler lawyers. The system of retaining judges in office during good behavior has been found by the people of Wisconsin to be worth more than the replacement once in a while of a satisfactory man with one who might and who probably would do better. A very complete account of

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the growth of the tradition will be found in the address of Chief Justice Winslow of the Wisconsin Supreme Court, reported in the minutes of the Kansas State Bar Association for 1914.

Whatever pride there may be in such a system of selecting judges, it is a pride in the way a so-called plan of popular election has been developed into an appointment by the leading lawyers of the district, with the concurrence of the Governor.

On the other hand, in Chicago, where there is a typical long ballot, and the parties are well organized and powerful, the appointing power is lodged with the leaders of the party organization. These men appoint the nominees. They did it openly and with a certain degree of responsibility, under the convention system. They do it now less openly and with less responsibility under our compulsory and partisan primary system. If one wishes to test the soundness of these conclusions let him inquire his way to a judgeship in such a district or listen to the experiences of the men who have found their way to a judgeship or have tried to obtain the office and failed. In almost every case the story is one of preliminary service to the organization, recognition by the local organization chief and through him recognition and appointment of a nomination by the governing board of the party organization. Those who do not go by this road do not get in. The voter only selects which of two or three appointing powers he prefers. Whichever way he votes he merely approves an appointment by party organization leaders.

Whether the So-called Elective System for the Selection of Judges is Successful or Unsuccessful depends upon what Sort of a De Facto Appointing Power develops out of it.

Obviously the best method of appointment is one which is legal, conspicuous, subject directly to the electorate and most interested in and responsible for the due administration of justice. So far as the *de facto* method of appointment which develops out of an elective system approaches these attributes it will be successful. So far as it departs from them it will be unsuccessful.

Thus in Wisconsin the appointing power is regarded as successful. The reason is that so far as the lawyers participate

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in the appointment intelligence is developed regarding the qualifications of candidates and the lawyers are on the whole interested in the due administration of justice. The fact that the Governor must approve makes the appointment to some extent conspicuous, responsible, and subject to the electorate.

On the other hand, in Chicago the *de facto* appointive system may be regarded as less successful, particularly under the present compulsory party primary. This is because the appointing power in the political leaders is obscure, not subject directly to the electorate and is little interested in or responsible for the due administration of justice.

Can anything be done to improve the Selection of Judges while still adhering to the Form of Selection by Popular Vote?

It may be answered that all efforts to confer the function of selecting upon the electorate of a metropolitan district are futile.

This is because the essential requirement for the selection of judges is a knowledge of the qualifications of lawyers for the office and this knowledge is beyond the reach of the electorate as a whole and is beyond the reach of any considerable part of the electorate.

It follows that there can be no election machinery which will enable the people of large districts directly to select judges, since no plan has been devised which will give to the electorate the necessary information as to the qualifications of lawyers.

In Chicago the compulsory partisan primary has entirely failed to confer upon the electorate any power to select judges. The fact is that the political leaders control the primaries just as they controlled the conventions, only with less responsibility.

There are many who sincerely believe that the electorate can choose its judges provided they are elected only at special elections where a judicial ballot is used which omits all designation of parties and upon which the names of candidates are placed by petition only and the name of each candidate is rotated upon the ballot so that it will appear an equal number of times in every position. The object of such legislation is to restore a choice to the electorate by depriving the party organizations of a predominant influence in judicial elections.

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The means adopted to deprive the party of its influence is to take from it the use of the party circle and the party column. It may safely be predicted of such legislation that it will not cause judges to be the actual choice of the electorate, nor will it eliminate the influence of the party leaders in judicial elections.

The supposition is that if the influence of the party leaders can be eliminated the electorate will necessarily make a real choice. But the electorate does not fail to choose simply because the party leaders have taken that choice from it. On the contrary, the party leaders rule because the electorate regularly goes to the polls too ignorant politically to make a choice of judges. That ignorance is due to the fact that the office of judge is inconspicuous and the determination of who are qualified for the office is usually difficult, even when an expert in possession of all the facts makes the choice. The proposed method of election does not in the least promise to eliminate the fundamental difficulty of the political ignorance of the electorate. If, therefore, it succeeded in eliminating the influence of the party organization the question would still remain: "Who would select the judges?" There is no reason to believe that the electorate would make any real choice. Electors would be just as politically ignorant as they were before. They would be just as little fitted for making a choice as they were before. The elimination of extra-legal government by party leaders does not give to the electorate at large the knowledge required to vote intelligently. Who, then, will select the judges? The newspapers might have a larger influence, but they would probably be very far from exercising a controlling influence or uniting in such a way as to advise and direct the majority of the voters how to vote for a number of judges. Special cliques would each be too small to control a choice and combinations would be too difficult to make. The basis of choice would, therefore, be utterly chaotic. There could be neither responsibility nor intelligence in the selection of judges. The results reached would depend upon chance or upon irresponsible and temporary combinations. With every lawyer allowed to put up his name by petition and chance largely governing the result, the prospect is hardly encouraging.

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There is no reason to believe, however, that any such disorganized method of choice would be tolerated. The most potent single power in elections would end it. That power would be the present type of party organization. It would be put to greater trouble in advising and directing the politically ignorant how to vote, because it would have been deprived of the party circle and party column. But the advice and direction could and would be given and followed. Each party organization would have its slate of candidates. Each would prepare separate printed lists of its slate to be distributed at the polls and the voter would for the most part, as now, take the list of that organization he was loyal to or feared the most, and vote the names upon it no matter where they appeared upon the ballot. Thus the appointment of judges by the party leaders would, after perhaps a period of chaos and readjustment, again appear. Perhaps it would be even stronger as a result of reaction and deliverance from the chaotic conditions which it relieved.

Some think that separate judicial elections make for selection by the people, but the political party leaders control the nominations for these elections as they control the nominations for other elections. The fact that the election is separate from other elections gives the electorate more opportunity to study the qualifications of the nominees put up for their vote. The issue with regard to the selection of judges is not complicated with the issues common to national, state and local elections generally. At the same time it cannot be said that the added opportunity which the electorate has to study the qualifications of candidates presented is in fact availed of to any such extent as enables the electorate as a whole, or even any considerable body of it, to vote with intelligence. The fact is that such elections are attended by comparatively few voters and the opportunity for political party leaders and political party machines to do the greater part of the voting is frequently taken advantage of.

Improvement in our methods of selecting judges while still adhering to the popular election can only be had by making the *de facto* appointing power more conspicuous and by this means more responsible to the electorate and more interested in the due administration of justice.

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We may promote the *de facto* appointing power of the party leaders by an abandonment of non-partisan primaries and election, the compulsory partisan primary and election, and a return to the convention system of nomination.

We may conceivably promote a greater participation in the appointment of judges by bar associations. This may be done by permitting bar association nominees, selected at bar association primaries, to be placed upon the official ballot as bar association candidates and permitting them to run as such, although nominated by a regular political party.

We may move in the direction of vesting a *de facto* appointing power in the Governor, by permitting nominations to be made by him — the names of the nominees being placed upon the official ballot as "Governor's Nominees." This is the plan now being put forward in New York State.

A *de facto* appointing power in the Governor may be promoted by giving him the power to fill by appointment any unexpired term, even though it have several years to run.

It cannot, however, be predicted that any of these schemes will give much satisfaction. Indeed, the defects of each under particular circumstances are very plain.

Where the judges are to sit regularly in the principal metropolitan district of the State the giving to the Governor of any power of appointment will be objectionable, as infringing the home-rule principle.

So in a large metropolitan district where the lawyers number five hundred or more and membership in the local bar association does not include most of the profession, if the bar primary be participated in by all the lawyers the result may be extremely disappointing. If the bar primary is participated in only by the members of the association, it would be objected to on the ground that it conferred an important special privilege upon the few. If each one of several bar associations nominated, the host and confusion of bar association nominees might become quite intolerable.

Whether nominations by convention can ever again be accepted is problematical.

Of the methods suggested for improving the *de facto* appointing power which arises under an elective system it can only be

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said that they tend in the only possible direction for producing more satisfactory results, since they secure a *de facto* appointing power which is more conspicuous, more responsible and more interested in the due administration of justice.

Retirement of Judges by Popular Vote.

In Actual Operation the Elective System either is not used to retire Judges, or if it be used the Retirement is usually in Fact by Political Leaders or the Result of a Popular Upheaval with Regard to Issues which have no Relation to the Conduct of the Judicial Office. Only in the Rarest Case is an Election used to express Popular Dissatisfaction with a Judge.

In Wisconsin the habit of the people to return sitting judges at every election so long as they will serve is so strong that actual retirement by election is practically eliminated. The tenure is *de facto* during good behavior with no retirement by popular vote unless conceivably a real popular dissatisfaction with the judge should arise. But such a real popular dissatisfaction is theoretical merely. It does not arise and in fact probably will not arise so long as judges are selected by an efficient appointing power.

Thus in Wisconsin, where the elective system is said to work well, we find the retirement of judges by popular vote has been *de facto* eliminated for the time being at least.

In Chicago, on the other hand, where the elective system falls far short of giving satisfaction, we find that elections frequently result in the retirement of judges through failure to be re-elected. It is clear, however, that such retirement is not a disgrace, but invariably mere political misfortune. Judges who are not re-elected are frequently soon after elected to fill a vacancy on the bench if they can be induced again to become candidates. This might well lead us to suspect, what is indeed the fact, that judges by the elective plan are not once in many years retired by the electorate because there is any real popular dissatisfaction with them, or even because the candidate running against them is the better man.

The divergence of theory and practice could hardly be greater.

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In theory the periodical election of judges is supposed to afford an outraged people a chance to cast from the bench one unworthy to administer judicial power. What in fact happens is this: Our judges are not subject to a recall merely, but to a progressive series of recalls. They are now subject to recall by the party organization leaders, who may refuse a nomination at the time of an election. Instances are not wanting where this has been done. If the judge secures the nomination he may be recalled by a wing of the organization knifing him at the polls. He may be, and frequently is, recalled by reason of an upheaval upon national issues which has nothing to do with his exercise of judicial power. In the case so rare that it is difficult for lawyers with a considerable experience at the bar to remember it, a judge is actually recalled because of popular dissatisfaction with him. In a word, in order to give the people a chance on a special occasion to recall a judge because he is undesirable, we have exposed the judge to recalls from the most objectionable sources, and made his tenure dependent upon conditions which have nothing whatever to do with his qualifications as a judge.

If the election be at a special judicial election separate from other elections, there is less danger of the retirement of judges by reason of an upheaval on national, State or local issues. On the other hand, since the vote at such election is light, political organizations wield a larger influence in it and the retirement of a judge is more likely to be affected by the influence of partisan party politics. For instance, a wing of the party organization may be able more easily to defeat a judge for re-election.

The only suggestion put forward by the directors for the improvement of the retirement of judges by popular election is to separate the issue of retirement from that of selection. That means the separation of the election which selects from the election which retires.

While the electorate cannot possibly exercise the selecting function it may conceivably exercise the retiring function, — *i.e.*, it may say that it does not want a particular individual to act as judge. Yet when that issue is complicated with the apparent issue of selection all chance of the effective exercise

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of the retiring function is lost. Some will vote on the basis that they are retiring or keeping in office a judge. Others will vote on the basis that they are selecting a judge. Some will vote against a judge to retire him, and others will vote against him in the effort to elect another. Some will vote for the judge in order to vote against the retirement. Others will vote for him because they wish to select him as a judge. When half a dozen or more judicial offices are to be filled at an election the confusion of issues must prevent any satisfactory exercise of a retiring function.

The moment we separate the election which selects from the election which retires it necessarily follows that no judge can be selected until a vacancy occurs. Hence, every judge when selected must hold upon a tenure terminable only by his death or resignation or retirement by impeachment, legislative action or by popular vote.

The separate retirement election should place before the voter only one question, "Shall the judge be continued in office?"

The retirement election may be required at the end of a certain term of years of service, — for instance, at the end of four, twelve and twenty years from the date of selection. Thus the first submission is after a short probationary term. If the judge is not retired at this election he holds for the longer term of eight years. After the third submission of his name he is no longer subject to any retirement election, but only to a provision for retirement upon reaching an age limit and upon half or full pay.

On the other hand, the judge may be subject to a retirement election initiated at any time by the petition of a percentage of voters. This is usually referred to as the recall of judges by popular vote.

The plan of submission at regular intervals of four, eight and twenty years is believed to be the better plan since it holds before the judge the certainty of a submission to the electorate without placing upon any one the disagreeable leadership involved in circulating a petition for a recall election. At the same time it protects the judge from the attacks of the moment and gives the community time for a sober second thought be-

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fore a judge is condemned. More important still, it protects the judge from the constant threats of recall by powerful political organization leaders. These, if permitted, may be used to interfere seriously with the exercise of the judicial function.

Conclusion.

Our Analysis of what the Selection and Retirement of Judges by Popular Election really means, with a Consideration of what Improvements may be made without Disturbing the Fundamental Principle of Election, leads to the Following Conclusion.

First. — The plan of popular election and retirement of judges should be abandoned since it does not produce and cannot be made to produce selection by the people. The attempt to confer upon the people the selecting function too often produces selection by political party leaders and retirement by them, — a *de facto* method of selection and of retirement which is most objectionable because it is extra-legal, obscure, not easily subject to the electorate, and too little interested in and responsible for the due administration of justice.

Second. — If, however, the selection and retirement of judges by popular election be insisted upon, the following plan is the least objectionable.

The chief justice and associate judges should be selected by popular vote to hold for an indefinite tenure and until retired in any one of the following ways: (1) By impeachment; (2) by retirement by the Legislature; (3) by retirement by popular vote at a special retirement election held periodically at the end of four, twelve and twenty years from the date of selection, at which retirement election the only question presented to the voter should be: "Shall the judge be continued in office?"

One very obvious advantage of this plan over the present method of election for terms frequently short is that it will at once reduce the number of judicial elections even where a large number of judges must be originally selected by election. No judge will be selected until there is a vacancy created by death, resignation or retirement in one of the ways specified.

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In short, there will be no election to select a judge until by reason of a vacancy such course becomes necessary.

Under the present system of election for a definite term there is a constant round of elections being ground out when there is no popular call whatever for ninety per cent. of them.

The reduction in the number of elections for the purposes of selection will result in greater intelligence being concentrated by the electorate upon the problem of selection when it is presented. The issue of retirement also will be isolated completely from the issue of selection so that the former may be presented with the utmost directness and simplicity to the voter.

Third. — Where it becomes necessary in accordance with the above plan to select a new judge at an election, what method of nominating shall be used?

The possibilities are as follows: —

1. Nomination by convention or directly by a county central committee.
2. By compulsory partisan primaries.
3. By nonpartisan primary and election.
4. Single election with preferential voting.
5. Nomination by the Governor
6. Nomination by bar associations.

None of these do or can result in selection by the people. Selection by the people is impossible. All the above methods tend to place a *de facto* appointing power in the hands of somebody.

Nominations by convention or county central committees tend to place the nominating power in the hands of the party political leaders. They make such nominations conspicuous and to a corresponding extent responsible. The party political leaders in convention will frequently nominate men of standing and character when such men would receive no support, or very little support, from the same political party leaders in the obscurity and confusion of a nomination by compulsory party primaries.

Nominations by compulsory partisan primaries not only tend to place the nominating power in the hands of political party

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leaders, but the appointing power so conferred is obscure and less responsible and results on the whole in poorer nominations than the convention system.

The third and fourth methods of nonpartisan nominations and elections result either in chance, as the principal factor in the selection of the judge, in which case there is no responsibility whatever for the selection, or it results in selection by political party leaders, which is quite as obscure and irresponsible, if not more so, than the compulsory party primary.

The fifth method of nomination by the Governor is conspicuous and responsible, but is far from an ideal method of appointment. For a metropolitan district in particular, it violates the home-rule principle.

The sixth method of nomination by bar associations may turn out well or ill, depending upon the size of the bar and the character and influence of its leaders.

With the above conclusions before the community, or its representatives, let each community, or its representatives, select what method of nomination it prefers. The directors recommend none because the results which may be obtained are too uncertain and depend too much on local conditions.

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Third Plan.

ELECTION OF THE CHIEF JUSTICE FOR A SHORT TERM OF YEARS, THE APPOINTMENT OF ASSOCIATE JUDGES BY HIM AND RETIREMENT ELECTIONS FOR ASSOCIATE JUDGES AT STATED INTERVALS.

Judges are not and cannot be selected by Election. All Forms of Election result in Appointment. The only Question is, What is the Best Method of Appointment?

The selection of judges by popular election not only does not in fact occur, but it is impossible, especially in a metropolitan district, that it should ever occur. Our assumption that judges can be selected at a popular election is the merest political hypocrisy. All efforts to secure the selection of judges by the people in such a district result necessarily in some *de facto* method of appointment, usually by the political party leaders. In rare instances, as in Wisconsin, it has developed appointment by the Governor and lawyers. These views have been more fully set forth in connection with the Second Plan of providing for both the selection and retirement of judges by popular election. (*Ante*, pages 594 to 605.)

It is a fundamental error, therefore, to suppose that the issue is between the selection of judges by appointment and their selection by popular election. Judges are only selected by appointment. The real issue, therefore, is between the different methods of appointment. The real questions which must be settled are: "What is the sound principle upon which to create an appointing power for the appointment of judges, and how far do our actual or proposed appointing powers conform to such principle?"

The Attributes of a Proper Appointing Power.

There should be no difference of opinion as to the attributes of a proper appointing power. It should be vested directly in a legally constituted authority. That authority should be

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conspicuous, subject directly to the electorate, and in the highest degree interested in and responsible for the due administration of justice.

Plan of Appointment by an Elected Chief Justice — the Appointing Power.

The least objectionable method of appointment and the one which promises the most is that of conferring the appointing power upon the chief justice of the metropolitan court.

This chief justice must be subject at frequent intervals to the electorate both in the matter of selection and retirement. That means he must be elected for a comparatively short term — say four or six years. This causes him to be subject to retirement by popular vote at the end of each term.

To this might conceivably be added the recall by popular election initiated by petition at any time. There may be something to justify this step on the ground that the power which appoints judges and directs the administration of justice by the court should be subject to the widest possible control. Nevertheless, the directors do not recommend such a recall provision for the reason that they fear that it would be used more constantly for the purpose of bringing political pressure to bear upon the chief justice by political party leaders, especially in the matter of making appointments, than it would be used by the electorate legitimately to subject the appointing power to their will.

The chief justice must also be in the highest degree interested in and responsible for the administration of justice by the court. This means that he must have large administrative powers over the activities of the associate judges.

Inevitably such an appointing power would be legally conferred and conspicuous to a high degree. Since the chief justice is elected from the metropolitan district which he serves, the home-rule principle is applied.

The plan is plainly an application of short ballot principle to the judiciary.

A precedent for this method of selecting judges exists in New Jersey. There the chancellor for the State at large, who

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is appointed by the Governor with the approval of the senate for a term of seven years, is given power to appoint his vice chancellors to the number of seven, each for a term of seven years. This seems to have worked admirably in building up a court with an able and effective corps of judges.

The following extract from the letter of Mr. Charles H. Hartshorne, of Jersey City, N. J., dated November 4, 1912, explains the plan of administering the chancery jurisdiction in New Jersey: —

The Constitution of New Jersey provides that "The court of chancery shall consist of a chancellor." The chancellor is appointed by the Governor with the approval of the Senate, for a term of seven years. He is usually reappointed, though it is an open question whether this office is an exception to the custom that judicial officers of the superior courts shall be reappointed, regardless of their political affiliations, so long as they are capable of giving efficient service. That custom has resulted in our having upon the bench of the higher courts, judges who have served for very long periods — twenty-five years and upwards.

A number of years ago, the work of the court of chancery having become too great for one judge to dispose of, a statute authorized the appointment by the chancellor alone (without confirmation by any other authority) of a vice-chancellor, as assistant. By further statutes, the number of these was increased to seven. The court now consists of a chancellor and seven vice-chancellors, who sit separately in different parts of the state. The vice-chancellors are appointed for seven-year terms. That bench is generally regarded as the strongest in the State and has given entire satisfaction to the bar and to the public.

The vice-chancellors hear interlocutory motions in nearly all cases under a standing rule of the court, but they conduct trials and final hearings only upon an order of reference from the chancellor. After trial they write the opinion of the court, which is usually reported, and advise the decree, which is then signed by the chancellor. No appeal lies from their decree to the chancellor, but all such decrees may be appealed directly to the Court of Errors and Appeals.

Theoretically, the vice-chancellors are merely referees who report and advise the chancellor, the decree being made by him upon their report. In actual practice, however, they are members of the court of chancery, in fact (but not in form), making the final decree of that court.

The system has worked very satisfactorily in respect to the character and attainments of the members of that bench, but the work of the court in populous cities is a good deal in arrear. This is due to the volume of business having outgrown the number of vice-chancellors.

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The advantages of such an appointing power over that exercised by the political party leaders under the elective system is obvious. The latter is extra-legal, far less conspicuous, far less responsible for or interested in the due administration of justice, and quite free from any direct responsibility to the electorate.

Sometimes ugly hints get abroad that particular party leaders are actually interested in securing as judges men who may be relied upon to give special immunity to certain offenders from the criminal law. The motive is very strong on the part of the organization chiefs to reward with an appointment to the bench those who have done more in the way of political service to the organization than in practice in the courts. Finally, the appointing power in the party organization leaders is not as directly subject to the electorate as it should be.

Of course, there are some exceptional cases where party leaders have felt their responsibility for good appointments to the bench. These are the shining examples. They are not the rule.

It is a mistake, however, to condemn too harshly party organization leaders because of the existence in them of this appointing power. They are not really responsible for its being in their hands. The elective system of selecting judges forces this appointing power upon the party organization leaders. Since selection by the people is impossible, and since we abhor selection by chance and the resulting political chaos, the appointing power gravitates necessarily toward that political organization which stands between the electorate and those conditions. The party organization leaders only exercise the appointing power the way it is to be expected that men in their position would. They become blameworthy only when they resist their deprivation of the appointing power and the placing of it in better hands. As far as the directors are advised, the party organization leaders have not been presented with any plan which deprives them of the power of appointing judges and hands that appointing power over to some better authority. It follows, therefore, that the party organization leaders have not yet been placed in a position of opposition to such a movement.

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The advantages of placing the appointing power in the hands of the chief justice instead of in the Governor are equally clear. The chief justice is, far more than the Governor, responsible for and interested in the due administration of justice by the court. His responsibility to the electorate for his appointments is much more direct than that of the Governor. Appointments by the Governor are only a small part of his record, while appointments by the chief justice are the larger part of his record. The Governor appoints, and if he selects a man believed to be capable his responsibility ends. But the chief justice who appoints must bear from day to day any inefficiency or faults which his appointees may develop. He has the strongest possible interest, therefore, to secure men who are really efficient to do the work of a court which he is continuously responsible for as a whole. It is not enough that a chief justice should appoint a man who is generally thought to be satisfactory. He must go farther and be sure that he secures a man whose future performances will strengthen the efficiency of the court. Here is the human motive which must be most relied upon to defeat appointments of inferior men for purely political reasons. Appointment by the chief justice for the district also satisfies the home-rule principle, which appointment by the Governor does not do.

The placing of the appointing power in an elected chief justice is better than placing it in an elected supreme court. The latter method of appointment would not satisfy the home-rule principle. The Supreme Court cannot be made to be responsible or interested in the operation of a court for a metropolitan district in so great a degree as must be an elected chief justice. When appointments are made by a number of the supreme court judges the responsibility is not concentrated, as it is when a chief justice alone appoints. The judges of the supreme court must come before the people for election on issues other than the exercise of an appointing power. Hence an appointing power in the judges of such a court is not directly subject to the electorate in the same degree as the appointing power in the chief justice.

Appointment by lawyers through the device of giving them power to make bar association nominations is too irresponsible

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and uncertain of beneficial results, especially where the lawyers are large in number, to be seriously considered as against appointment by an elected chief justice.

METHODS OF RETIRING THE APPOINTED ASSOCIATE JUDGES.

Each associated judge appointed by the chief justice should hold for an indeterminate period. The chief justice would only fill vacancies which occurred during his comparatively short tenure. This would mean, of course, very few appointments during each term of office of the chief justice. Until all the judges had been appointed it would, of course, be advisable that the system of appointment should come in gradually. That could be accomplished by providing that the chief justice should not fill more than one-fourth or one-third of all the judgeships by appointment during any single four or six year term.

The associate judges so appointed by the chief justice may be subject to be retired by impeachment; by some form of legislative recall, and by popular vote at periodical elections, at which the only question submitted would be: "Shall the judge be continued in office?" Such election should be held, as already suggested, preferably three, nine and eighteen years after the judge's appointment. That would mean three submissions in eighteen years, which is exactly what each judge now undergoes if his term is one of six years.

OBJECTIONS TO THE THIRD PLAN ANSWERED.

What are the objections to such a plan and how are they answered?

It will be objected that to give the chief justice the power to appoint associate justices is to lodge too much power in one man. But the power is not so extensive as it at first appears. The chief justice can only fill vacancies which occur during his term of office. And until all the judges are appointed no chief justice should be permitted in his term to appoint more than one-fourth or one-third of the total number of judges in the court. Then it must not be overlooked that the chief justice is answerable directly to the electorate at

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short intervals and may, if thought necessary, be made subject to popular recall at any time.

It will no doubt be feared that the chief justice will fall under the influence of the party organization leaders and hence will exercise his power of appointment as directed by them. This, however, will not frighten any one who realizes that judges are now appointed wholesale directly by the same party organization leaders. When the truth about the present method of appointment is faced it will be realized that the public will be much better served by a few appointments by a chief justice who is under the control of the party leaders than by wholesale appointments by these same party leaders direct. The power of the chief justice is so conspicuous and his responsibility for the due administration of justice so great, that he would be forced to try to persuade the party leaders to let him appoint some men of superior talents.

The chances, however, are that the chief justice would be so important and conspicuous an officer and his power such that his nomination and election would have to be much more fully considered than is the case where the party leaders appoint to a nomination and seek the election of an obscure member of a bench composed of a considerable number of judges. Necessarily, therefore, the chief justice would generally possess a fair degree of independence, and this would be reflected in his appointments.

The independence of the chief justice may be further increased by a provision which permits him on his own motion to remain one of the associate judges of the court after he has failed of re-election as chief justice. The obvious objection to this is that we should have an associate judge who had been disapproved at the polls. But the issue in an election for chief justice would be political and not personal or judicial. It would go to the exercise of the administrative powers conferred upon the chief justice and the power of appointment. Not once in many times would it go to the chief justice's ability to serve as a judge. Therefore repudiation at the polls would not be at all inconsistent with the chief justice remaining as one of the associate judges of the court. As such he would be assigned to duty by the incoming chief justice and would be subject to

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have his name submitted at the end of a three-year period to the electorate with the question: "Shall he be continued in office?" It would seem, on the whole, that the gain in independence on the part of the chief justice would be greater than the danger of having, for three years even, an undesirable associate judge.

All fear of the chief justice having too much power and using it badly should be dissipated by the provision made for his retirement by impeachment, legislative recall and frequent election (which is equivalent to a recall by the electorate at regular intervals), and perhaps the recall initiated by petition at any time.

It will, no doubt, be feared that the appointed judge during good behavior will suffer from lack of responsibility to the electorate for the way he exercises his judicial power. This is very clearly prevented, however, by the provision for the submission of the judge's name to the electorate at intervals of three, nine and eighteen years from the date of appointment, with the question: "Shall he be continued in office?" This in effect makes the judge's appointment for a probationary period of three years, after which time his record is submitted to the voters. If approved, he holds for six years. If approved the second time he holds for nine years, and if approved the third time he holds until his retirement by death, resignation or reaching an age limit. If this is not sufficient popular control, it is possible to take the further step of making each judge subject to a recall at any time at a recall election initiated by petition. But in going so far there is great danger to the independence of the judge from the threatened exercise of the recall election by those whose interests are inimical to the proper administration of justice.

There may still be fear that the appointed judge, even when his name must go before the electorate, will become arbitrary in his conduct towards lawyers and their clients. The reason, however, for such arbitrariness on the part of the judges is not that they have been appointed so much as because they are left without any authority over them which is responsible for the way they act and the sort of work they do. The best preventive of arbitrariness, apart from the submission of

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judges to the electorate, is the fact that there is a chief justice over them with large powers as to where the judge shall sit and what sort of cases he shall hear. An ugly disposition on the part of a judge can be more effectually disciplined through the power of such a chief justice than in any other way. The fact that judges are part of an organization with a chief over them who is responsible to some extent for their behavior, and the esprit de corps of the court as a whole, are important safeguards against arbitrariness and lack of judicial temper on the part of individual judges.

In a metropolitan district where the judges are many and the dockets long, the judges will sit in different divisions for handling special classes of litigation. There would probably be an appellate division, a chancery division, a common law division and a criminal causes division. Each would have a presiding justice, and the several presiding justices and the chief justice would form a judicial council or executive committee with powers of management of the court as a whole which were not delegated to the chief justice alone. Among other powers such a judicial council should have power to hear complaints against judges and to discipline them by public or private reproval. It would be entirely feasible to give such council power, upon a trial and for cause shown, to remove from office any judge except the chief justice. The causes for such removal should be general, such as inefficiency, incompetency, neglect of duty, or conduct unbecoming a judge. A small part of the above powers would free judges from all tendencies to arbitrariness or ill-treatment of lawyers and litigants.

Those who think that its novelty is an objection to the plan of selecting judges by the appointment of an elected chief justice are reminded that half a dozen years ago the lawyers had practically never heard of the plan of giving to the courts the power to make rules of practice and procedure. To-day no other method is seriously advocated.

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Fourth Plan.

ELECTION OF THE CHIEF JUSTICE FOR A SHORT TERM. THE APPOINTMENT OF ASSOCIATE JUDGES BY HIM WITHOUT ANY PROVISION FOR THE RETIREMENT OF ASSOCIATE JUDGES BY POPULAR VOTE.

The provisions for carrying out this plan are precisely the same as those set out for the Third Plan, omitting the sections which provide for the retirement of associate judges by popular vote. The reasons in support of this plan are as follows: —

(1) It is suggested that the modes of retirement otherwise provided — removal by the Judicial Council and removal or impeachment by the Legislature — are ample for ridding the bench of an incompetent person. And their procedure is sensible and practical. For charges resting upon specific facts requiring careful investigation, the Judicial Council forms a skilled, responsible and impartial tribunal. For charges resting upon general and indefinite dissatisfaction, or upon open and positive public policies not requiring specific inquiry, the Legislature is a suitable tribunal, representing popular convictions but still having some sense of responsibility, and small enough to offer at least the chance of fair argument before judgment.

(2) The modes of discipline, otherwise provided to be exercised by the Judicial Council, amply take care of minor shortcomings, and relieve a large part of the supposed need for popular recall. Moreover, the effect of such a discipline — now wholly lacking in our system — will so tend to improve the individual judge in his shortcomings that the community will get an added protection — now lacking — from the judge's shortcomings, and will thus take away a large part of the risks of long judicial tenure.

(3) Retirement by popular vote, especially in a metropolitan district, submits an issue of fact to a tribunal largely incompetent to judge upon it. In the first place, the evidence of the facts can never be got effectively to the minds of even a small fraction of the tribunal. In the second place, the tribunal is

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unqualified with standards of judgment upon many of these considerations which affect the propriety of judicial conduct. In the third place, only a small fraction of the tribunal-ever would weigh the evidence or the arguments. One has only to peruse the method outlined on page 616 for hearing charges before the Judicial Council to realize how inferior is the process of hearing before a popular tribunal.

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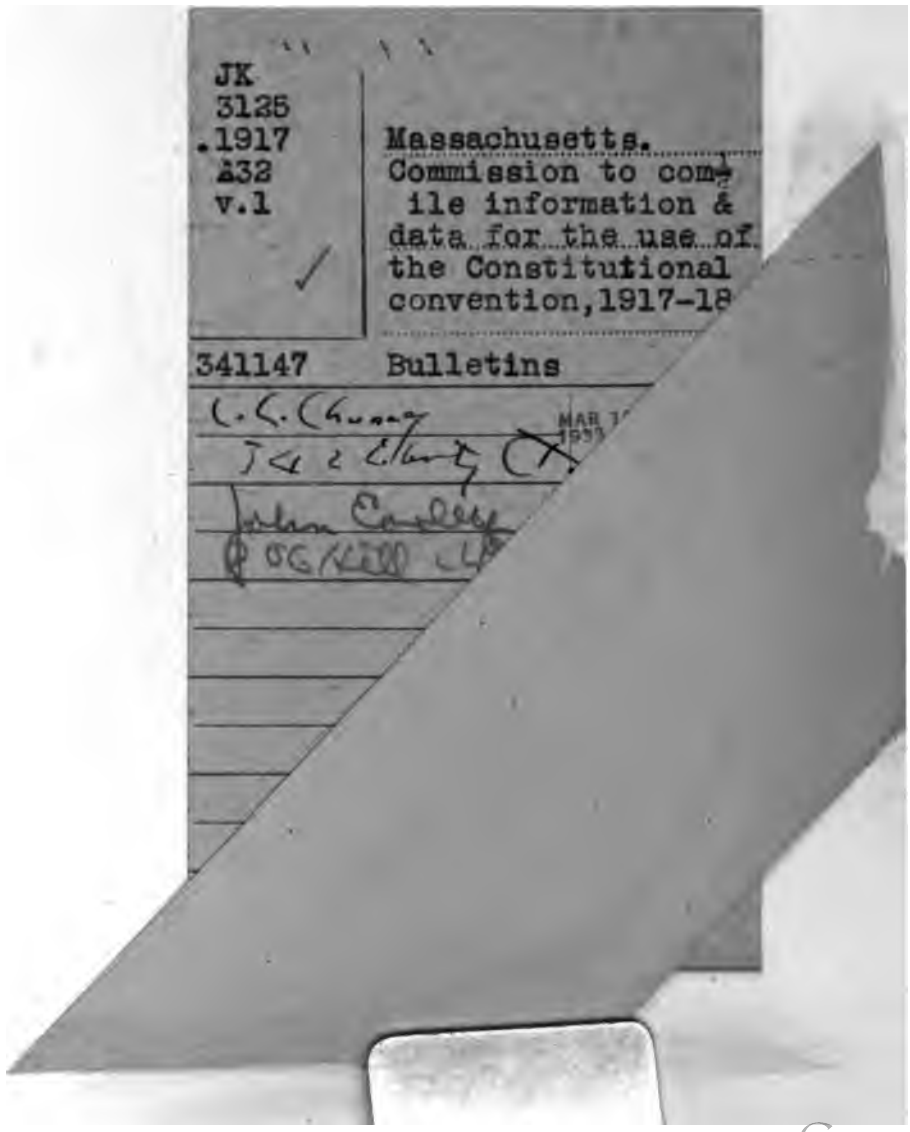

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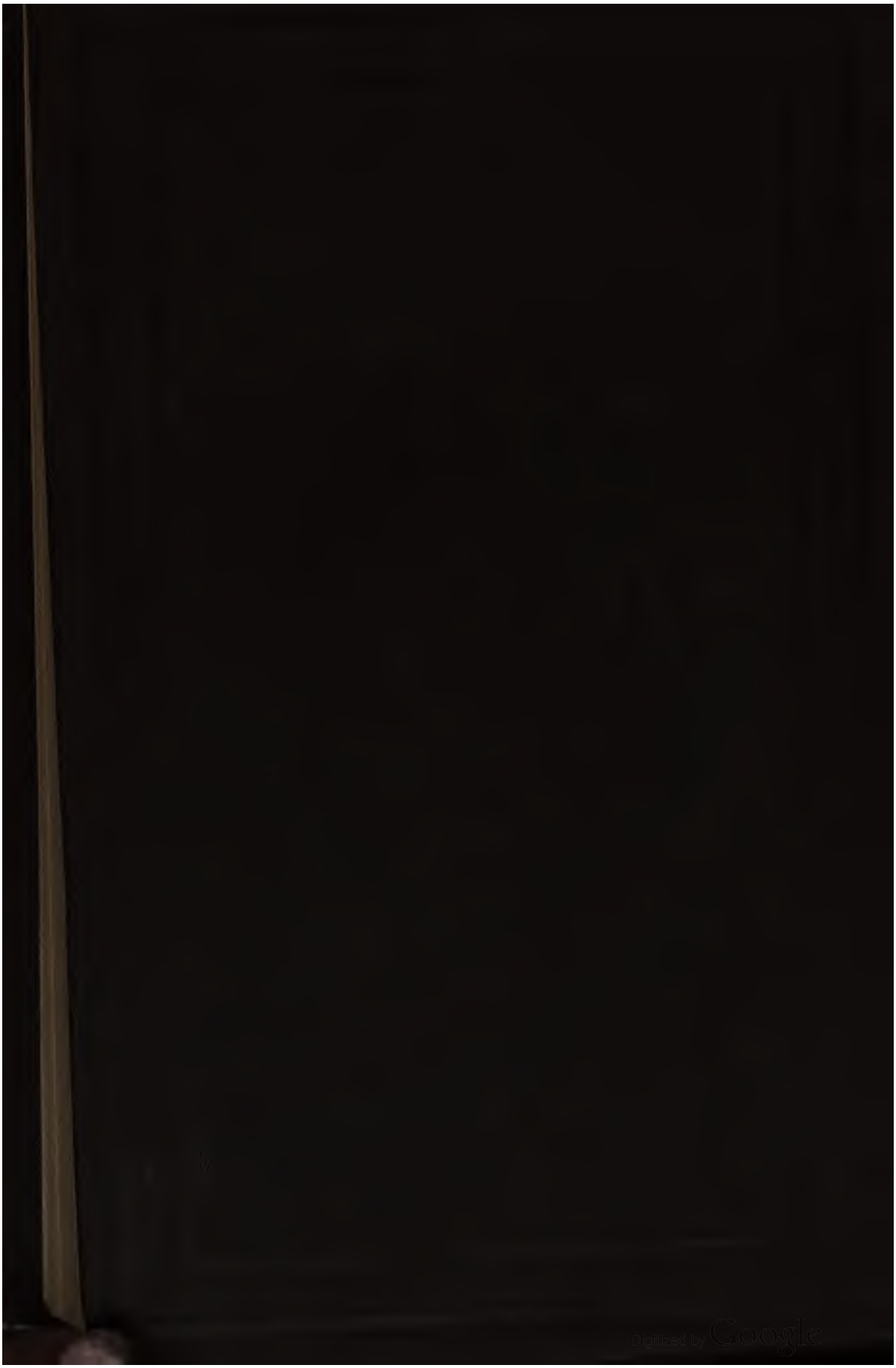
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